

N. England - Chancery - Fra. Margrave 1764

REPORTS OF CASES

Taken and adjudged in the
Court of Chancery,

In the Reign of
King *Charles I. Charles II. and James II.*

BEING

Special **CASES**, and most of them decreed with the Assistance of the Judges, and all of them referring to the Register Books. Wherein are settled several Points of *Equity, Law and Practice.*

To which are added Learned **ARGUMENTS** relating to the Antiquity of the said Court, its Dignity, Power and Jurisdiction. As also the Great **CASE** between the Dutchess of *Albemarle* and the Earl of *Bathe*.

In Two Volumes.

The Second Edition with large Additions.

Carefully corrected, from the many Errors in the former Impression. *1st Ed. 1697*

VOL. I.

In the **S A V O R**:

Printed by **J. Purr**, Assignee of *Edward Sayer Esq;* for **J. Mairhoe** in the *Middle-Temple Cloisters*, and at his Shop in *Stafford*. 1715.

14

FH
MVSEVM
BRITANNICVM

Licenced,

May 4th. 1693.

transmission, when they are pronounced
from a Chanceryman, or a fair State
then from one of those who are the

I have added the great Oath of the
which has been solemnly taken

THE

PREFACE.

THE Favourable Entertainment
which the First *Edition* of these
Reports met with, hath encoura-
ged me to publish this Second: The ac-
ceprance whereof I shall not much doubt,
seeing it has been carefully revised and
cleared from the many Errors of the for-
mer Impression. The Cases here reported
were heard and decreed, with great Deli-
beration and Solemnity, by Persons very
Eminent and Famous in their Professions,
and upon that account they bear with
them their own Letters of Recommenda-
tion. For I cannot imagine, that the
Chancery Causes, which, if of any consi-
derable Weight, as usually they are, be-
ing generally mix'd with Law, should re-
ceive a closer and more satisfactory De-

The Preface.

termination, when they are pronounced from a Clergyman, or a bare Statesman, than from one of that Honourable Profession.

To render them the more Compleat, I have abridged the great Case of the *Duke of Norfolk*, which hath Solidly settled the perplexed Points of Perpetuities: It is true, The Lord Chancellor *Finch* differed in Opinion at that Time from the Learned Judges, and he was in Pain to do it; yet certainly there is no Common Lawyer, (let him Espouse his Notions never so dearly) but must both admit and acquiesce in the Equity of that Case.

I have also added an Abstract of the Famous Case of *Com' Mountague, contra Com' de Bath*, with the Judges and Lord Keeper's concurrent Opinions therein, and their Reasons briefly recited.

In many other excellent and useful Cases herein Reported, tho' they have been argued and decreed in a Court of Equity, yet a Common Lawyer may find many Points agreed and settled to good Satisfaction, respecting those two great Cargoes of Law-busines, WILLS and SETTLEMENTS.

But to answer an Objection which causeth some quarrel with us: How comes it to pass, that after such frequent and solemn

The Preface.

learn arguing of Causes, in all their Niceties and Circumstantials, that Decrees are so often Revers'd by succeeding Chancellors? I must Reply to this, as that Learned Chancellor did in the above mentioned Case of the *Duke of Norfolk*. *I must be saved by my own Faith, and must not Decree against my own Conscience and Reason.*

It is true, Equity and right Reason in it self is an universal Thing; it is the same all the World over. It is not Climates nor Cases, Persons nor Things that can alter the proper and intrinick Notions of Truth, Right and Justice.

But then we must consider that the Matters about which Equity is conversant, come clothed with Variety of Circumstances, are represented in different Shapes, and attended with many collateral Points which deserve Consideration; and that Men's Judgments, especially in Politicks or Morals, can seldom be said to amount to Mathematical Decisions: No one can imagine himself to have such refined Powers of Soul as to decree *Æquitatem ad pondus*. We must also allow there are some little (I know not what) Inclinations (no ways guided by any Interest or Prejudice) which will turn the Scale; there is something of a Man's Temper which will insensibly min-

The Preface.

gle and slide into his best formed Notions and Designs.

Besides by a further Penetration into the Series of Transactions, the Intentions of the Parties and the like, perhaps something may arise which was not thought of, or not thoroughly considered. But the true and main Cause of the Variety of our Opinions is, the natural Imperfections of our Faculties: Uncertainty even in our own Judgments, is incident to our Nature. And I cannot express my Notion better, than in the bold Words of that Ingenious Canonist Gomez, in *Regula de Triennali possessore*, cap. 5. *Non est inconveniens judicium esse uno tempore justum & postea ejus contrarium justius. Et hoc malum imponi videtur mortalibus in pœnam, ut eorum Opiniones secundum varietatem temporum senescant & intermoriantur, aliæq; diversæ renascantur & deinde pubescant. Talis enim est humani juris disciplina, ut nulla in ea Opinio eodem statu diu stare possit. Dies diei eructat verbum, & nox nocti indicat scientiam.*

Such Reflections as these will convince us with what great Reason a Judge in Equity is to search into deliberate Resolutions, in Cases of the like Nature, before him, and thereby wisely secure himself from making Orders and Decrees totally Arbitrary.

Re-

The Preface.

Reports therefore in *Chancery* should not be slighted or undervalued, especially such as are of the Nature of these now presented to you, where the Cases of Weight (and most of these are so) are all resolved and decreed with the Assistance of our Common-Law Judges.

And this that I last mentioned is certainly a Thing of good Consideration, and will help to wipe off an Aspersion cast upon the Laws of *England*, by some foreign Civilians, who seem to jeer us for having a Court of Equity distinct from the Common Law. It is true, in some sense it may be understood so: For it moderates the Rigour of several Penalties, it relaxes the strict Ties of unreasonable Conditions; it avoids surreptitious and sometimes inofficious Devises; it aids against unavoidable Losses, clandestine Frauds, and the like; yet not so, but that it still maintains a due Respect to the Rules of our stated Laws. For our Chancellors very well know that (which is the great Security of Englishmen) our Common and Municipal Laws are not to be invaded in any Essential Part, and that no Equity in the World ought to impeach our Fundamental Maxims.

You will here likewise be informed of several material Things in reference to

The Preface.

Process, Orders of this Court, and the Jurisdiction of other Courts, &c. which will be of great Use for the due Management of a Cause therein depending with Regularity, Speed and Success.

I shall make one Remark more, and that is, these Reports do not only inform you that such Things have been decreed, but the Cases are here stated with all their considerable Circumstances, and with Debates on both sides (which are briefly set down) whether and how far the Parties deserve Relief, by which an ingenious Reader will receive great Satisfaction, and by degrees form, and model his Judgment in advising about parallel Cases.

Here are also added very learned Arguments concerning the Dignity, Power and Jurisdiction of Chancery, that which hath been *vexata Questio*, not so much between Party and Party as between Court and Court, and those the standing Courts of greatest Authority, in which the Statute of *Premunire* and that of 4 H. 4. are clearly explained, and the Judges Certificate of their Opinions to King James I. To which are also subjoined further weighty Considerations and Arguments on the Sta-

The Preface.

Statute of 4 *H. 4.* wrote by a very learned and Able Lawyer, never before Printed.

Advertisement.

WHereas in many of these Cases where there are several Plaintiffs and Defendants, they are all along purposely avoided to prevent the swelling of the Book, the Reader is desired in those Cases to put in *al* Plaintiffs & *al* Defendants.

Just published.

C*ursus Cancellariae*: Or, The Course of proceedings in the High Court of Chancery. Wherein the Authority, Jurisdiction and modern Practice of that Court, are methodically and distinctly treated of, from the Bill filed, and process thereupon to the final Sentence and Decree. As also of reversing Decrees, by Bills of Review, and Appeals to the House of Lords; And the method of proceeding in the *Petty-Bag-Office*, &c. With variety of useful Precedents throughout, and a compleat Table to the whole. Published by *William Bohun* of the *Middle-Temple*, Esq; 8vo. 1715. Price 6 s. Printed for *J. Walthoe*.

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*A List of the Lord Chancellors and
Lord Keepers of the Great Seal of
England, from the first Year of
King Charles I. to the Reign of
King William and Queen Mary.*

SIR Thomas Coventry Kt. made Keeper
of the Great Seal Nov. 1. in the first
Year of the Reign of King Charles I. 1625.

Sir John Finch Kt. was made Keeper
23 Jan. 14. Car. I. 1639.

Sir Edward Littleton Kt. made Keeper
23 Jan. 16 Car. I.

John Williams Bishop of Lincoln made
Lord Chancellor. 1614.

Sir Richard Lane Kt. made Keeper 30 Aug.
25 Car. I. 1645.

Sir Edward Hyde Kt. made Lord Chan-
cellor of England 29 Jan. 12 Car. II. 1660.

Sir Orlando Bridgman Kt. made Keeper
30 Aug. 19 Car. II. 1667.

Anthony Lord Ashley Earl of Shaftsbury
constituted Lord Chancellor of England
17 Nov. 24 Car. II. 1672.

Sir Heneage Finch Kt. made Keeper
19 Nov. 25 Car. II. 1673.

Sir Francis North Kt. made Keeper
20 Dec. 34 Car. II. 1682.

Sir George Jefferies Kt. constituted Lord
Chancellor of England, 28 Sep. 1 James II.

REPORTS

AND

CASES

Taken and adjudged in the
COURT of CHANCERY

In the REIGN of
King CHARLES I.

Farmer contra Compton, 1 Car. I. fo. 1088.

THAT the Plaintiff and Defendant came to a Treaty for a Marriage between Sir Jo. Farmer the Plaintiff, (Sir Richard Farmer's Son) and Dame Cecily, Daughter of the said Defendant Sir Henry Compton, with whom he was to have 4000 l. And it was agreed that 800 l. per Annum should be settled on her for a Joynture, and that the Plaintiff should deduct 200 l.

B

per

*Marr. with consent
McC. Eq. 59. 60.
Gill. Rep. 26-27.*

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B

per

*Marr. with consent
&c.
max. 29. 59. 60.
Gillb. Rep. 26-27.*

per Annum thereout during his Life ; that direction was given to draw Writings accordingly ; but before the Assurances were perfected, the said Sir *John*, the Son, married her without the Knowledge of the said Fathers ; and the Plaintiff and Defendant being ignorant thereof made the Assurances, and the Defendant Sir *Henry Compton* agreed they should marry ; but in the said Assurances the deduction of 200 *l. per Annum*, as is aforesaid, was omitted in the drawing of the said Deeds. And after the Marriage was confessed by the said Sir *John* to one *Benskin*, who acquainted Sir *Henry* therewith, and 1150 *l.* of the 4000 *l.* was paid to the Plaintiff, which Portion of 4000 *l.* was originally to be raised out of the said Lands according to a Conveyance thereof made by the Countess of *Dorset*, the said Dame *Cecily's* Grandmother, unto the said *Benskin* and others, to the intent that they should, out of the Profits thereof pay to the same Dame *Cecily* her said Portion of 4000 *l.* at her Age of 21 Years, or when, with the consent of her Father, she should be married, which should first happen ; and if she should die before such Age or Marriage, then 1000 *l.* of the said Portion should be paid to her Sister *Anne*, who had the like Portion given unto her by the said Countess, and the other

Marriage
with Consent.

other 3000 *l.* to be distributed amongst other the younger Children of the said Sir *Henry Compton*. And for that the said Sir *John Farmer* died before any of the 2850 *l.* (being the Remainder of the 4000 *l.* Portion given by the said Countess to the said Dame *Cecily* as aforesaid) was paid, and the said Dame *Cecily* being married as aforesaid, and the Defendant *Benskin* being trusted by the said Countess as is aforementioned, he doubts that if he should proceed to pay the said remaining 2850 *l.* and increase thereof according to the Agreement aforesaid, whether he might not again be called in question for the same by the said Lady *Farmer* and the younger Children, if the said Dame *Cecily* should die before 21 Years of Age, and prays the Judgment and Decree of the Court for his Indemnity.

This Court as touching the Payment of the residue of the 4000 *l.* according to the Conveyance made by the Countess to *Benskin* and others in Trust as aforesaid, for raising of the said Portion, and how the said *Benskin* shall be discharged thereof, and of the Money already paid: This Court ordered a Case to be made out of the Deed, and a Case being made and agreed unto, was by the Lord Keeper sent to the Judges at *Serjeants Inn* in *Fleetstreet*, and all of the said Judges were

Reports in Chancery.

Consent of a
Father to a
Marriage
when good.

Trustee dis-
charged.

of Opinion, that the said Marriage between the said Sir *John Farmer* and his Lady, having taken Effect in Manner before declared, ought in Equity and Justice to be esteemed a Marriage had with the Consent of the said Sir *Henry Compton* her Father, of which Opinion his Lordship is also, in respect there was an express Consent of the said *Henry* both before and after the said Marriage consummated, and no disagreement or alteration of his good liking in the mean Time. And this Court decreed the residue of the Money to the Plaintiff, and the said *Benskin* and his Heirs, &c. discharged of the said 4000*l.* notwithstanding that the said Marriage was had without the Assent of the said Sir *Henry Compton* as aforesaid, or any other Pretence or Matter whatsoever.

Plunket contra Brereton.

THAT Sir *Randal Brereton* seised in Fee of the Mannor of *Creswel* and *Blunhil*, made a Lease of the Mannor of *Creswel* to Dr. *Compton* for divers Years to come, rendring 40*l.* per Annum to Sir *Randal* his Heirs and Assignees, after which Sir *Randal* in consideration of a Marriage between *Richard Brereton* his Brother and Heir, and the Plaintiff *Mary* Daughter of Sir *Walter Heveningham*, and

of 2000 *l.* Portion paid by Sir *Walter*, agreed that the said *Mary* should have in Augmentation of her Joynture the 40 *l.* per Annum reserved on the Mannor of *Creswel*, and 10 *l.* per Annum reserved on *Blunhil*, and thereupon Sir *Randal* conveyed the said Mannors to the Feoffees and their Heirs, to the Use of himself for Life, and after to the Use of the said *Richard* his Brother, and Heirs Males of his Body, and after to the Use of the Defendant Sir *Thomas Brereton*; yet nevertheless, that the said *Mary*, Wife of the said *Richard*, might have the said Rents of 40 *l.* per Annum, and 10 *l.* per Annum for her Life for supply of her Joynture; which Conveyance being settled, Sir *Randal* died, and Sir *Richard* his Brother entred and made a Lease of *Blunhil* with a Covenant to free it from the said 10 *l.* per Annum, and died without Issue Male; and so the Inheritance in Tail of all the Lands came to the Defendant Sir *Thomas Brereton* who refuses to let the said Plaintiff *Mary* have the said Rents of 40 *l.* and 10 *l.* per Annum, he claiming the same as due to himself.

This Court having maturely considered of the said Conveyance and of some Cases in Law presented by both Sides, declared they were clear of Opinion, that the said Rents of 40 *l.* and of 10 *l.* per Annum in

Rent payable in augmentation of a Jointure, tho' not distrainable for at Law, yet relieved in Equity.

Distress for
Rent.
Gillb. Rep. 209

Equity are due and ought to be paid to the Plaintiff *Mary* during her Life ; howbeit the said Plaintiff in point of Law cannot distress for the same, unless the said Leases are out and determined, and Decreed the same to be paid according to the intent of the said Conveyance made to her thereof as aforesaid.

Cornwallis Viscount Savage & Cornwallis,
4 Car. L. A. fo. 995.

Will.
Grant.
Annuity,
Lease.

THis Case is to be relieved for several Annuities : The Case is (*viz.*) that one *Henry Breton*, Gent. being possessed of a Lease of 99 Years of the Lands in question made in the Time of King *Edward VI.* by the then Bishop of *Salisbury*, did assign the Residue of the said Term unto *George Breton* his Son, and *Anne*, the Wife of the said *George*, who by their Deed the 19 *Eliz.* assigned the said Lease to one *Thomas Cornwallis* and Lady *Katherine* his Wife, one of the Daughters of the then Earl of *Southampton* ; and afterwards the said *Thomas Cornwallis* dying, and the Lady *Katherine* surviving, she by Deed 6 *Jac.* granted to the Plaintiff *William Cornwallis*, and to the Plaintiff his then Wife, two several Annuities of 15 *l. per Annum* to be issuing out of the Premises during the Residue of

of the said 99 Years then to come, if the said Plaintiff *Will. Cornwallis* and *Mary* his then Wife, or any Issue of their Bodies should so long live, to have and to hold the one Annuity of 15 *l. per Ann.* from *Lady-day* or *Michaelmas*, which first happens after the Death of the said Lady *Katharine*; and that the Lady *Katharine* by her Will in *May 1623*, gave to the Plaintiff *Dennis Breton* and *Mabel* his Wife 10 *l. per Ann.* to be issuing out of the Premises during the Years to come, if the said *Breton* and *Mabel* his Wife should so long live; and also by the said Will gave to the Plaintiff *William Breton* Son of the said *Dennis* 20 Nobles *per Annum*, to be issuing out of the Premises during the Years to come, if he so long liv'd; and that the said Lady *Katharine* by Deed in 1 *Car.* granted an Annuity of 10 *l. per Annum* to *Elizabeth Breton* out of the said Premises, during the said Term to hold after the Death of the said Lady *Katharine*; and the said Lady intending to establish the said Lease upon one *Thomas Cornwallis*, her Husbands near Kinsman, by Deed 8 *Decemb. 22 Jac.* assigned the said Lease for 20 Years to begin after her decease, and caused the said *Thomas Cornwallis* to covenant, that he should after her decease allow to the Plaintiffs all Annuities by her granted, or

to be granted, and after the said Lady died in 2 Car. and the said *Thomas Cornwallis* survived, and by several Deeds confirmed the said Annuities to the said Plaintiffs; but by his Deed 2 Car. assigned his Interest in the Premises to the Defendant Viscount *Savage* in trust for payment of his Debts and other Trusts, and died about January last.

Habendum in a Grant tho' void in Law for Incertainty, yet good in Equity.

The Defendant Viscount *Savage* insists, that the Grants of some of the said Annuities are void in Law, by Reason of the said incertainties of the *Habendum*, and that the Covenant of the said *Thomas Cornwallis*, Assignee of the said Lady *Katharine*, extends only to Grants by her made and to be made, and not to the Bequests by her Will, and that the said *Thomas Cornwallis* had assigned his Interest in the said Lease to the Defendant Viscount *Savage*, before he did confirm the said Annuities, so as the same were void in Law.

Annuities tho' not payable in strictness of Law, yet good in Equity.

Yet this Court notwithstanding upon the whole Case, did declare that the said several Grants and Bequests of the said several Annuities, are good in Equity to bind the said *Thomas Cornwallis* the Assignee of the said Lady, and all claiming under him, and decreed that the Defendant Viscount *Savage* should pay the Plaintiffs

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tiffs their said Annuities and Arrears, according to the said Grants and Bequests to them made during the said Lease.

*Lydda contra Vanlore, fo. 452. 720.
L. B. 2 Car.*

This Case is where a Trust for Children in an Estate was removed, in order to have the Estate sold for payment of Debts.

THE Case is (*viz.*) That Sir Richard Lyddal, by and under several Grants and Assignments made unto him, was, before any Assurance made thereof by him to Sir Peter Vanlore, possessed of all the Premises, for several Terms of Years unexpired, the old Rent of all which comes to 20 l. 6 s. 6 d. yearly; That the said Sir Richard Lyddal, by Deed 1 Jan. 7 Jac. in consideration of a Marriage between him and Dame Judith, and for a Jointure for the said Judith, did Assign such of the Terms, as he had at the Time of the said Assignment, making unto James Askew, Sam. Hare, and William Holliday, upon this Trust expressed in the said Deed (*viz.*) That they, their Executors and Assigns, should permit the said Sir Richard Lyddal during his Life, and the said Dame Judith after his Death, during her

*see of Trusts at large
1. & 2. Cha. C. &
29. Apr. in Tabulis*

her Life, and the Heirs Males of their Bodies, after their several deceases, to take all the Rents, Issues, and Profits of the said Premises, during the several Terms therein to come, if the said Sir *Richard Lyddal* and Dame *Judith*, or any Issue Male of their Bodies should so long live; and if they should be all dead, then that such Daughters as the said Sir *Richard* and Dame *Judith* should have between them, should equally during all the said Terms, take the Profits thereof; and in default of such Daughters, then to the Executors of the said Sir *Richard*, to take the Profits during the Terms, with a Covenant therein contained on Sir *Richard's* Part, to procure the Reversion and Inheritance of parcel of the Premises, (*viz.*) of the Mill and Water of *Sonning*, both which were of the yearly Rent of 6 *l.* 6 *s.* 8 *d.* to be conveyed unto the said Sir *Richard* and Dame *Judith*, and the Heirs of the said Sir *Richard* of the Body of the said Dame *Judith*, the Remainder to the Right Heirs of the said Sir *Richard*, of the Body of the said Dame *Judith*, the Remainder to the right Heirs of the said Sir *Richard*.

And further, upon purchase of the Inheritance of any other of the Premises assigned as aforesaid, to procure the like Conveyance to be made thereof; and that

the

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the said Mills and Water were 20 June, 8 Jac. accordingly Conveyed, after which the said Sir *Richard* Conveyed as well all the said Leases and Inheritance, as also one other Lease for Years, of Part of the Premises which the said Sir *Richard* did purchase after the said Assignment of the said Sir *Peter Vanlore*, for the Consideration in the Order of Reference mentioned.

This Case was referred to the Judges, who having advisedly considered thereof, do find, That the Trust here is not fixed or settled upon any Person certain, after the decease of the said Sir *Richard* and Dame *Judith*, but generally upon the Heirs Males of their Bodies, and after upon their Daughters, they then at the making of the said Assignment having no issue at all, and as yet no Daughter; and if a Conveyance were of Land of Inheritance in such Form, the Words Heirs Males, would be Words of limitation, and not Words of purchase; and if they should be Words of purchase, yet it would be in the Power of the Tenant for Life to destroy such a Remainder; and being in Case for a Term of Years, if such Term had been limited to the said Sir *Richard* and his Lady, and the Heirs Males of their Bodies, by Way of Estate and Interest, and not by Way of Trust, such limitation to the Heirs Males had been utterly void, and the

Trust fixed upon a Person not certain.

Words of limitation and not of purchase.

Limitation of a Term for Years to the Heirs Males void, and shall go to the Executor.

Considerati-
on in a Deed

the said Term for Years should have gone to the Executor, and not to the Heir Male, and Sir *Richard* had then had Power to dispose of his Term at his pleasure, so as it may be doubtful whether the said Sir *Richard* and Dame *Judith* have not the like Power in Equity to dispose of the trust in this Case; and the Judges do further observe, That there is no other Consideration mentioned in the said Deed to make this Assignment, but only to make provision for Dame *Judith* during her Life, neither is there any Person in *esse* now, nor at any Time hereafter during the lives of the said Sir *Richard* and Dame *Judith* can be in *esse*, that can complain of any prejudice done them by granting or selling over of the said Terms, though the Executor of the surviving Trustee should joyn with Sir *Richard* and Dame *Judith* in the Sale thereof, nor can any of their Children, though they were all of full Age, make any assurance thereof, for till the Death of the said Sir *Richard* and Dame *Judith*, it cannot be known who shall be the Heir Male of their Bodies, and that it appears that the Lease of the said Mills and Water being 6 *l.* 6 *s.* 8 *d.* per Annum, of the said yearly old Rent of 20 *l.* 6 *s.* 6 *d.* there is not above 20 years to come; and in another Lease but 32 Years to come, and in another

ther but 24 Years to come, and another but 45 Years to come; so as it is not unlikely but that the said Sir *Richard* and the said Dame *Judith*, or one of them may survive the said Terms, which would prevent all Questions touching the same; wherefore, if the Agreement between the Parties for the purchase of the Premises should not now take effect, we conceive that it would tend to the extream Damage and Prejudice, if not to the utter undoing of the said Sir *Richard* and Dame *Judith*, and of all their Children, for then the said Sir *Richard* and Dame *Judith* should not only want Means of present Relief and Maintenance for themselves, but Education for their Children. For all which Reasons we are of Opinion, That this Case falls not within the general Case of Trusts; and further, That in this special Case, accompanied with these several Circumstances, the said Dame *Judith* being willing thereto, to joyn with her Husband in a Fine, it is just and fit that the said Agreement should be Decreed.

Judges Certificate confirmed.

Atkins contra Temple, 1 Car. 1. f. 1064.

Trust in an Estate for Children (not in esse) at the Time of the settlement removed, and sold.

Trusts.

TH E Bill is to restrain the Defendant from plowing upon ancient Meadow

dow and Pasture Grounds, being the Plaintiffs Inheritance ; which Premises, according to the Grant of them, were to be used only as Meadow and Pasture, and not otherwise, and which Ground was rich and fertile, little or nothing inferior to good Meadow Ground, for goodness of Soil, or yearly Value to be letten, and hath not been plowed in the Memory of Man.

**Plowing an-
cient Pasture
restrained.**

vid. 1-Roth 377 pl. 13
~~Handg. 2 Chas.~~
32. 2 Wern. 23.

This Court in respect of the generality of the Case, directed Precedents to be produced ; the Precedents being produced, his Lordship, assisted with Judges, declared, That he did find by divers Precedents, part in the Time of the Lord *Elefmere*, and others since, that the Plowing of ancient Pasture has been restrained by Decrees of this Court, and declared, that in those Cases so decreed, it did not appear that the Pasture restrained from Plowing were either so ancient or so rich and fertile as in this Case ; and his Lordship did further declare, That whereas Plowing of Meadow by the Law is Waste, he conceiveth, that the Plowing of ancient Pasture is of equal value with Meadow, as no less prejudice, either to the Landlord or to the Commonwealth, than to the Plowing of the Meadow, and therefore fit to be restrained in Equity, the Judges being of the same Opinion.

Flowing of
Meadow. Hc?
~~Waste~~
~~no 2g. lbs~~
~~250 399. Hc.~~

and Decreed the Defendant to forbear
Plowing, as aforesaid.

Kinaaston cont. Com. Derby, 2 Car. 1. f. 1441.

THIS Court with the assistance of the Judges, Ordered Copies of Depositions and other Records to be Recorded and used, and to be Authentick.

Depositions
of Records
Authentick.

Powel cont. Moulton, 2 Car, 1.

THAT Robert Moulton, Father of the Plaintiffs, Amy, Merriel, Margaret Millicent and Mary, being possessed of the Mannor of Churchamborne, by virtue of several Leases and having but one Son named William Moulton, the said Robert Moulton and one Savage, who had an Estate therein, in Trust by Deed June, 13 Jac. granted several Leases to William the Son, but upon trust and agreement, that the said William should grant the same to Friends in trust to the uses agreed; and though after (*viz.*) Ju. 13 Jac. William assigned the said Leases to the Defendants Croker and Palmer, to commence immediately after his decease, for the residue of the said Term in the said Leases, to the Use of the Defendant and Issue Male on William, and for de-

Chattels
Lease Assign-
ed.

default of such Issue, to the Use of his Issue Female, equally to be divided between them; and for default of such Issue, to the Use of the said *Merriel, Millicent, Margaret, Mary and Amy*, by equal Parts to be divided, and to the Issue of their Bodies, and for default of such Issues to the Use of the several Executors and Assigns, of the said *Merriel, Millicent, Margaret, Mary and Amy*, for their several Parts and Portions, with Covenants for quiet Enjoyment of the said Leases, according to the Meaning of the said Deed; and a Covenant for farther assurance within two Years, with proviso and condition, that if *William* dyed within 20 Years after the Date thereof without Issue, that it should be lawful for him to charge, or otherwise by Will to devise 300 *l.* out of the Profits for Payment of his Debts or otherwise, before his five Sisters should take the benefit thereof. That *William* being since dead without Issue, he made the Defendant *Amy* his Wife Executrix, who claimeth the said Leases as Executrix, and insists the Agreement to be void in Law, and *William's* Debts at his Death to be 700 *l.* and that without the Leases she hath not Assets.

This Court on reading the Deeds and *William's* Will, was fully satisfied, that was the intent of *Robert Moulton* the

Plaintiffs Father, and of *William*, that for want of Issue of *William* the Leases should go to the Use of the said *Merriel, Millicent, Margaret, Mary* and *Amy*, by equal Parts, and to their Issues, and for default of such Issue to the several Executors and Administrators of the said *Merriel, Millicent, Margaret, Mary* and *Amy*; and the said Assignment by *William* was in pursuance thereof; and *William* doth affirm the said Assignment, having thereby bequeathed the Defendant *Amy* 300 l. which was reserved by Proviso in the Assignment; and though the Assignment be questionable in Law in respect of the Commencement for quiet enjoyment according to the intent and the Covenant for farther Assurance; and though the Defendant *Amy* insists there are Debts owing by *William* whereto she is liable: This Court on the Plaintiffs Offer do decree the said Assignment shall take Place, and the Plaintiffs shall enjoy the said Leases during their Continuance according to the Meaning of the Assignment; and that if there be Debts exceeding the personal Estate and Monies which is or shall come to the Defendants Hands, the Plaintiffs shall pay the same out of the Profits of the Premises, and discharge the Defendant *Amy* of the same.

Assignment of a Lease with Limitations in Tail, Remainder over (in Trust) though void in Law, yet good by intent in Equity; and the Assignor's Executrix shall not have it.

Yet such Executrix shall pay the Testators Debts out of the Profits if she hath not Assets.

Pool contra Pool, 1 Car. fo. 4.

Heir bound
by his Fa-
thers Cove-
nant, the
Lands being
conveyed to
him.

2. Vern. 99. - 1. Cha.
cas. 17b.
2. 1. Roll. Abr. 377.
8c.

THat the Plaintiff being ordered to perform his Fathers Covenants, refused, insisting that he is not chargeable with his Fathers Covenants as Heir, the Lands being conveyed to him; nor as Executor, having no Assets.

This Court ordered that the Plaintiff shall seal the said Covenant according to the said Articles of his Father, and thereby Covenant to free the Premises from Leases and Incumbrances, or stand Committed to the Fleet.

Magr. & Socij Emanuel College in Cantab.
contra Evans, 1 Car. 1. L. A. f. 980.

Defective conveyances
etc. help in Equity

2. Vern. 132.
2. Vern. 163-265-
565-585-609-680.

THAT the Earl of *Huntington* seized in fee of the Mannor of *North-Cabury* with Advowson appendant, and for payment of Debts by Way of Mortgage, 25 *Eliz.* made a Lease for 500 Years of the said Mannor with Appurtenances, not mentioning the Advowson by express Name, with a Clause of Redemption, and for advancement of Learning and Religion, of his free disposition in 28 *Eliz.* by Deed granted the said Advowson to Sir *Francis Hastings*, and others, and their Heirs, to the Use of the said Earl for Life,

Life, Remainder to the Master, Fellows, &c. of the said College, and their Successors, for ever; and shortly after in the same Year paid his said Debts, and for valuable Considerations the said Earl sold the said Mannor to the said Sir *Francis Hastings*, yet the Advowson was not mentioned in the said Deed of Sale, but was mentioned in the Fine; which this Court observed, and conceived thereupon, That it was purposely omitted in the Deed, for otherwise the Covenant of the said Earl had been broken; but it was put into the Fine on purpose to convey the Advowson to the said Sir *Francis Hastings*, during the Life of the said Earl only.

Advowson
Appendant,
not mentioned in the
Conveyance
of the Mannor.

And this Court conceived the said Advowson being leased not by special Name, but as appendant to the Mannor, and that only by Way of Counter-Security, and the Money thereby secured but 100 l. and at the Time of granting the said Advowson to the said College, the said Earl took no Notice of the said Lease of 500 Years, as a Thing of validity, for that it had been absurd in the said Grant to reserve to himself an Estate for Life after 500 Years, that the said Lease was assigned by the said Earl to *Matthew Evans* the Defendants Uncle, in Trust for the said Sir *Francis Hastings*, for

Lease Mort-
gaged and
the Money
paid, though
not at the
Day, yet void
in Equity, a-
gainst a Pur-
chaser, or a
Charity.

1. Cha. C. 20, 271.

2. Cha. C. 5, 84, 99.

1. Vern. 36, 37, 309.

2. Salk. 449. *Eq. dtr.*
316.

securing his Purchase; and this Court conceived the said Lease being but a security, and that Money paid, the said Lease had been void, as well against the said College, as against any other; and though the Money not paid at the Day but afterwards, the said Lease ought to be void in Equity, as well as on a legal Payment, it had been void in Law against them.

The Defendant insisted, That Sir *Francis Hastings* after his Purchase of the said Mannor and Advowson, did present thereunto one *Sibthorp*, who was instituted and inducted, and enjoyed the same as under the Title of the said Sir *Francis*. This Court therein declared the said *Sibthorp* was presented in the Life Time of the said Earl, by the said Sir *Francis*, according to the intention of his Purchase; and he being then in possession of the said Mannor, whereunto the said Advowson was appendant as *Cestui que Trust*, the same was no usurpation; but the said Sir *Francis*, after the Death of the Earl selling the said Mannor with the appurtenances to *Mathew Evans*, under whom the Defendant claimeth, there was no mention made of the Conveyance or Fine of the said Advowson; and the Defendant also insisting, that he Claims as Heir to a se-
cond

cond Purchasor, both being for valuable Considerations.

This Court conceives, That neither the said Sir *Francis*, nor the said *Matthew Evans* were any clear Purchasors of the said Advowson, but the said Lease was intended only to be kept on foot to defend the said Mannor from Incumbrances, and not to carry away the said Advowson any longer than the said Earl's Life, nor to prejudice the Earl's Grant to the said College: And this Court observed, That the said *Matthew Evans* himself, who was a Learned Man in the Laws, and one of the Barons in the Exchequer, would not upon his second Purchase have left the said Advowson out of the Deed and Fine, if he had thought he had purchased the said Advowson. So this Court is of Opinion, That neither the said Sir *Francis's*, nor the said Baron *Evans's* Purchases ought to be admitted in Equity, to take away the Benefit of the Gift to the said College, but that the Plaintiffs have good right in Equity to the said Advowson, and that a Charity of this Nature ought to be relieved as soon as a Purchasor against such a Lease. Decreed the Plaintiffs, to enjoy accordingly.

Lease kept on foot to defend from Incumbrances.

See Shower's Cas. in Parl. 22. Duke's Charity Uses 6, 65, 71. &c.

Charitable Use relieved. 29. Apr. 96, 97. &c.

Herbert cont. Lowns, 3 Car. 1. fo. 665.

SUIT is touching some Conveyances made by *Peter Bland* deceased, whereby he conveyed to the Defendants *Lawrence Lowns, James Mills, and Jolliff Lowns,* several Lands to them and their Heirs, and also touching a Will made by the said *Bland*, 1 Car. against which the Plaintiff prays relief.

Will conceal.

Fraud.

*2. Vern. 9, 9, 76, 700.
29. Abr. 404. &c.*

That in the Year 1615, the said *Bland* made his Will, whereby he divided all his Estate amongst his three Children and their Issues; and that in the Year 1617. The Defendant *Lawrence Lowns* being a Scrivener, was intrusted with the management of *Bland's* Estate, and in the Year 1621, the said *Bland* settled his Estate on his Brother *John Bland* and the Defendant *Lawrence Lowns* and their Heirs, in Trust to sell and dispose of the Money according to his Will, and in default of such appointment to be distributed amongst his Children and Grand Children, as the said Trustees should think fit, with a Proviso to revoke the same, paying to the said Trustees 200*l.* apiece: And in 1622, the said *Bland* made a second Will, and thereof made the Defendant *Lawrence Lowns, John Bland,* and one *Baldwin* Executors, and put the said Will

Will in a Box under three Keys, and each Executor had a Key, which said Will is not extant, but supposed to be for the good of his Children and Grand-Children, as the said *Bland* had declared, but the said Will was concealed or burnt by the said *Lowns*; and the said *Bland* afterwards in the Year 1624 being very weak, was by the said *Lowns* drawn to make two other Wills, and the said Estate being re-assured to the said *Bland*, he was procured to convey the same again to the aforesaid Defendants, and their Heirs, and other Writings were made declaring the Considerations of the said Deeds; and afterwards 1 Car. the said Defendant *Lowns*, when the said *Bland* grew weak, got him to make a new Will and other Deeds, and to levy a Fine, and do other Acts much to his and his Childrens prejudice.

That the Defendant excepts to the Plaintiffs Bill, because 'twas Exhibited by the Children and Grand-Children, to question the said Will and Conveyances in the said *Bland's* Life Time. The Lord Keeper did now declare, That although he could not upon this Bill Decree any particular Sums of Money, either to the Plaintiff or any other of the said *Blands* Kindred, yet the Bill was sufficient to ground a Decree to reform any Circumvention, Fraud and Practice wrought upon the said *Bland* in his weak-

Will Con-
cealed.

Fraud re-
formed.

ness, and to remove any Deeds so fraudulently obtained, and that the Estate of the said *Bland* might come to those who of right it doth belong to by Law.

Several Debates of the Council on both Sides, whether the said *Bland* were of sound and disposing Mind? This Court declared, That although it hath been often taken, that a Testator answering ordinary and familiar Questions, was not a sufficient Proof of a disposing Memory; because to a disposing Memory it is necessary there be an understanding Judgment fit to direct an Estate; yet this Court would not pronounce that the said *Bland* was not of a disposing Memory at the making the said Will and Conveyances, but this Court was fully satisfied, and did pronounce that the said *Bland* was a very weak Man, and apt to be circumvented; and that therefore although the said Deeds and Will were not void in Law, as not being made by a Man of *non sane* Memory, yet so much thereof as was drawn from him by practice and circumvention ought to be made void in Equity.

This Court declared upon all Circumstances now appearing, That they would not make void the latter Will and Conveyances, because a Man somewhat imperfect, yet disposing his Estate, with the advice of his Friends, and good Counsel,

What is a
disposing
Memory re-
quisite to a
Will, and
what not.

Co. Litt. 111. b. 1. fol.
Abbr. 600. Raym. 334
Eq. Abbr. 409. &c.

fel, and amongst his Friends and Kindred, it is hard to avoid it, by saying he was not of a disposing Memory, whereof this Court is and shall be very tender. But this Court and all the Masters then assisting were clear of Opinion, That the benefit redounding to the Defendant *Lowns* by the said Deeds drawn from *Bland* in his weakness by circumvention, being a Paralytick Man, without Consideration, and the Intention of *Bland* was always to advance his Children and Grandchildren until this Fraud: This Court decreed that the said *Lowns* and the other Trustees, their Heirs and Assigns shall not have any benefit from henceforth by the said Conveyances, but shall convey the said Lands to the Six Clerks to be by them conveyed to whom of right they shall belong. And the Defendant *Lowns* shall not meddle in performing of the Will without his Co-executors.

A Scrivener by sinister Means making himself Trustee shall have no benefit by the Conveyances and making himself Executor, not to meddle without his Co-executors.

Tate contra Southby, 3 Car. 1. fo. 1159.

A Bill of review brought to reverse a Decree for Tithes made by the Lord *Elefmere* in respect the Plaintiff hath had a Verdict at Law, and Sentence in the Ecclesiastical Court since the Decree: This Court would not reverse the Decree notwithstanding any Thing urged against it.

Tithes. Decree denied to be reversed.

Rick-

Rickfers contra Herne, 3 Car. 1. fo. 883.

A Feme sole makes an Agreement with others to distribute the Residue of the Estate of one *Katharine Debel* amongst them, and after marries the Defendant, The Question is, Whether the Defendant is bound by this Agreement of his Wives as to any of the Residue which came to his Wife after Marriage.

Baron not
bound by the
Agreement
of his Wife
when she was
Feme sole.

This Court is of Opinion, that what came in between seven and eight years after Marriage by the Death of the said *Katharine* was not within the compass of the Agreement, but was to go to the benefit of the Husband.

Havers contra Burton, 4 Car. 1. L. A.
fo. 47, 714.

Custom of
London.
Orphans.

Eq. Abr. 150. to 160.
& Priv. Lond. passim

THAT *Robert Havers* the Plaintiff's Husband deceased, having 1000 *l.* left to him by his Father, being a Citizen and Freeman of *London*, and the said Plaintiff's Husband being an Orphan under Age, and his Portion being in the Chamber of *London*, the said *Robert Havers* married the Plaintiff, who brought unto him a good Portion; and afterwards, and before the said *Robert Havers* came of Age, he died, but by Will gave the Plaintiff the 1000 *l.*

The

The Defendant insists, that the said Robert's Portion by the Custom of London survived to his Brothers and Sisters, and that 500 l. of the 1000 l. in the Chamber of London was a Legacy given to the said Robert to be paid at 21, or if he died before, then to go to his Brothers and Sisters, and so he could not dispose of it.

This Court nevertheless conceiving it an hard Case against the Plaintiff, who brought a Portion, ordered it to be referred to the Master of the Rolls and two Serjeants at Law to settle the difference, who did order the said Brothers and Sisters to pay the Plaintiff 240 l.

A Woman that brought a Portion relieved against the Custom of London.

Brown contra Thetford, 4 Car. 1. L. A. fo. 62.

THE Bill is to maintain the Prescription of a *Modus Decimandi*, to which Bill the Defendant demurred, and says it is proper for the Common Law or Ecclesiastical Court. This Court allowed the Demurrer and dismissed the Bill.

Tithes. *Modus Decimandi*.

Game contra Hoe, 4 Car. 1. L. A. fo. 65.

Hat Richard Hoe by Deed gave to Eliz. his Daughter all his Plate, Jewels, Household-stuff and other his personal Estate whatsoever; and all the Jewels,

Personal Estate limited.

Jewels, Wearing-Apparel and Ornaments of *Alice* his Wife upon Trust, that the said *Eliz.* her Executors, &c. should permit the said *Richard* during his Life, and the said *Alice* during her Life, to have the Use of the said Plate, Jewels and personal Estate.

Touching the disposition of which personal Estate this Court made no question, the said *Alice* being dead, but the same do appertain and belong to the said Plaintiff as Administrator to the said *Eliz.* his Wife according to the said Deed of Grant, and decreed the same accordingly.

Davis contra Higford, 4 Car. I. fo. 204.

Tho' a Statute want a Day of Payment, yet good in Law.

*2-1. Cha. Cas. 270.
304.*

Interest Money.

THE Question is touching the Validity of a Statute in respect the same wanted a Day of Payment, which was debated in the Court of Common Pleas and upon several Arguments, both at the Bar and Bench there, was adjudged good in Law; and this Court would not allow Interest for the Sum of 60*l.* being Interest Money; and the Defendants to allow the Plaintiffs Interest for such Monies as had been made out of the Lands extended *Vid.* this Case in *Winch's Reports.*

Warmstre

Warmstrey contra Dominam Tanfield,
4 Car. I. L. A. fo. 151.

THE Plaintiffs Title appeared to be ^{a Possibility granted} that one *William Freeman* being ^{46. c. 10. - 10. Co. A7} possessor of the third Part of the Parsonage ^{Lampert's case.} for the whole Term to come, granted all ^{1. Sid. 100.} his Interest therein to one *Alborough* in Trust for the Use of the said *William Freeman* and *Alice* his Wife, during their Lives, and after to the Use of such Issue Male of their two Bodies as the said *William* should by Will appoint, and after the said Will. appointed the Premises after the Death of the said *Alice* unto *Richard Freeman*, Son of the said *William* and *Alice*: And that the said interest in Law of the said *Alborough* came by mean Conveyance unto *John* and *Robert Palmer*, and that the said *Richard Freeman* during the Life of the said *Alice*, who not long after died. assigned the Premises unto the Plaintiff, and also released to the Plaintiff, and the said *Palmer*s assured their Interest in Law in the said Premises to the Plaintiff.

The Defendant insists for Title, that the said *Richard Freeman* about two Years after his Assignment aforesaid to the Plaintiff, made a Lease of the Premises to *Walter Thomas*, and *John Makerith*, who passed their Estate to one *Evans*, and *Hawkins*,

kins, in Trust for the Defendant the Lady *Tanfield*, and had possession given her.

This Court with the Judges taking Consideration of the said Assignments, Grants and Release, were of Opinion, and declared, that howbeit a Grant of future Possibility is not good in Law, yet a Possibility of a Trust in Equity might be assigned, and the said *Richard Freeman's* Assignment of his said Trust unto the Plaintiff is also confirmed by the Assignment of the said *Palmer*, who had the Interest in Law, and the said Plaintiffs Assignment is also precedent to the Deed made to the said *Thomas*, by which the said Defendant the Lady *Tanfield* claimeth the said Lease.

A Grant of a future Possibility not good in Law, yet a Possibility of a Trust in Equity may be assigned.

Ferrers contra Ferrers, 4 Car. 1. L. B. fo. 948.

Heir.

Portion to be laid out in Land to the Use of the Wife and Issue, the Remainder over, Wife dies before the Purchase, and the Issue dies leaving Executor, the Money decreed to the Executor.

THIS Suit is touching a Portion of 4000 l. the Plaintiff claiming the same as Heir to *William Ferrers*: The Case is, That a Marriage being intended between the said *William Ferrers* and *Jane Vanlore* Daughter of Sir *Peter Vanlore*, the said Sir *Peter* agreed to give with his Daughter to the said *William* 4000 l. to be laid out in a Purchase of Land to be settled on the said *William* and *Jane*, and the Heirs of their two Bodies, the Remainder

2-29. Apr. 26. 2602 ~~2762~~ 2762 ~~2762~~ 2762
427. 200. 400. 500. 400.

Reports in Chancery.

31

mainder to the right Heirs of the said William; and Sir Peter gave Bond of 8000 l. for the Payment of the said 4000 l. within three Months after demand, and to pay 400 l. per Annum in the interim, and that by Deed of the same date with the Bond made between William Ferrers, Father of the said William of the first Part, the said William of the second Part, and Sir Peter of the third Part, it was agreed that the said Sir Peter should detain the said 4000 l. until such Purchase as aforesaid: But before the said Purchase made Jane died, having Issue a Son, who soon after died, and the said William the Younger surviving and accounting the 4000 l. and Interest as part of his personal Estate, declared it should go to his Executors to pay his Debts and Legacies, and that the said William the Younger had received 400 l. part of the 4000 l. of the said Sir Peter, and the said William the Younger died leaving the Defendant his Executor.

This Court with the Judges declared and are of Opinion, that if the Land had been purchased, yet the said Jane and her son being both Dead, the said William the Younger might have conveyed away the same from the Heir at Law notwithstanding the Agreement; and by the said Bond of 4000 l. being to be paid to the said

said *William Ferrers*, his Executors or Administrators, the same in Law and Equity belongs to the Defendant, and decreed the Money to the Defendant as the Law had appointed it with Interest.

Interest.

*Gillb. Rep. 142.
Eq. Abr. 206.*

Owen contra Aprice, 4 Car. 1. L. B.
fo. 1247.

Mean Pro-
fits.

THis Court left the Plaintiff to take her Remedy at Law for the Recovery of the Mean Profits notwithstanding a Decree for the same in the Marches.

How cont. Figures, 4 Car. 1. L. A. fo. 307.

Heir.
Mortgagor.
Devisor.

THAT *William Grills* being in his Life Time seized of Fee and Right in a Reversion of Lands depending upon the Life of one *Katherine Hicks* Mother of the said *Grills* being the Jointure of the said *Katherine*; and the said *Grills* by Deed 25 Nov. 18 Jac. Mortgaged the said Lands unto *William Atwel* and *William Gallion*, and their Heirs, which Mortgage became forfeited, and afterwards the said *Gallion* by Deed 1 Mar. 22 Jac. Released all his Right, Title and Interest in the said Lands unto the said *Atwel* and his Heirs for ever; and that afterwards *Atwel*, by Will, devised the same Premises to the Plaintiff and his Heirs for ever

and the Plaintiff being a Merchant, and his livelyhood consisting in the Returns of Money, and the Consideration in the said Deed of Mortgage being 340*l.* disbursed in 18 *Jac.* as aforesaid, upon a dry Reversion, the Plaintiff by his Bill seeks that the Defendants who are Heirs at Law unto *William Grills* the Mortgagor, may repay the said 340*l.* with damages, or else the Lands be Decreed to the Plaintiff, to the end he may sell the same.

This Court declared that no Decree could be made against the Heir of the Devisor, but only against the Mortgagor and his Heirs; and Decreed the Heirs at Law of the Mortgagor, to pay the Plaintiff the 340*l.* with damages, or in default, the Premises Mortgaged are Decreed to the Plaintiff, to be sold for satisfaction of his Debt: This was *nisi causa*, and none shewed.

Upon a Bill by the Devisee of a Mortgage against the Heirs of the Mortgagor, Decreed, that the Heirs of the Mortgagor shall repay the Mortgage-Money, or else the Lands to be sold.

Middleton cont. *Jackson*, 5 *Car.* 1.
fo. 353, 397.

THE Plaintiffs and Defendants were to produce Precedents for Fines, in Cases of Tenant Right in what manner they had been assessed formerly by this Court; the Defendant now offering to give the Plaintiffs a moderate years value

D

for

It was ordered that the Defendant should pay the Plaintiff a moderate years value for the same.

A moderate
years Value
a reasonable
Fine in case
of Tenant-
Right.

for a Fine ; this Court in Case of Tenant-Right conceiving the said offer to be fair and reasonable, decreed the Defendants to pay the Plaintiffs for the present, one whole Years value of their Lands for a Fine, and as Land riseth or falleth upon every Alienation or Death of the Tenant, or Death of the Lord, a moderate Years value ; and the Defendants to give notice of every Alienation at the Lord's Court ; and the Fine now assessed is not to be taken as a Fine certain ; and a Master of his Court to set the said Fine.

The said Master assessed the Defendants to pay for a Fine to the Plaintiff for every Acre of Land according to the usual Measure in those Parts, which in a Tenant Right they shall hold of the Plaintiffs Mannor, the Sum of 7 s. except it be a Land called *Moss Land*, which he rateth at 12 s. the Acre, which the Defendant submitted unto, which this Court decreed accordingly.

Peter contra Rich, 5 Car. 1. fo. 315.

Surety.

THAT the Plaintiff and Defendant with one *Southcot* and *Grimes* became bound to the Lord *Russel* in two Bonds of 1600 l. apiece for Payment of 800 l. 100 l. being Purchase Money, and the Plaintiff and Defendant entred
into

into two Counterbonds to the said South-
 not for his Indemnity, and the first Bond
 of 800 l. was paid, and the Plaintiff and
 Defendants *Richard Sheppard* came to ac-
 count, upon which the Plaintiff appeared
 to have paid all his Part of the said Pur-
 chase Money save 40 l. for which the
 Plaintiff gave the Defendant *Rich* alone a
 Bond of 80 l. and thereupon was to be
 freed by the said Defendants of the
 800 l. Bond, and was to give over the
 said Purchase wholly unto them; yet
 notwithstanding 100 l. of the said Pur-
 chase Money being not paid, the Plaintiff
 was compelled to pay the same, being for-
 merly bound with the Defendants in the
 said Bond of 1600 l. together with 5 l.

Interest thereof, which said 105 l. this Payment
 Court conceived ought to have been paid proportiona-
 by the said *Sheppard* as the Residue of his bly by two
 Part of the said Purchase Money, but the Sureties, the
 said *Sheppard* being insolvent, the said third being
 insolvent.
 105 l. in the Opinion of this Court ought
 to be equally paid and born by the Plain-
 tiff and Defendant *Rich*, and decreed ac-
 cordingly.

1. Cha. C. 32, 246,
 223 223. J. Vern.
 440. 29. v. 114,
 115.

Huddleston contra Lamplugh, 5 Car. 1.
fo. 796. & 7 Car. fo. 370.

Dower confirmed.

1. Cha. Ca. 101.

Lease to at-
tend the In-
heritance.

THIS Case is touching a Lease of the Mannor of *Little Hatley* and other Freehold Lands made by *Simon Perrot* and *Mary* his Wife 19 *Eliz.* to *Will. Gibbens* and *Edw. Gibbens* for 90 Years, contrary to the purport of a Decree in the Court of Wards, by which the said *Perrot* had only Power to make Leases for 21 Years, if he had Issue by his Wife, as Tenant in Tail might do, and not otherwise. The Plaintiff insisted that the said Lease was kept on Foot by the Plaintiff's Father, only to accompany the Freehold and Inheritance, and not for any Profit to be made by the said Lease: That the Plaintiff's Father 28 *Eliz.* by Feoffment of Livery and Seisin settled the Premises to the Use of the Plaintiff immediately after the Death of *William Huddleston* the Plaintiff's Father, who died in March 3 Car. and the Tenants attorned to the Feoffees, and the Defendants insisted that the said Lease was kept on Foot by the said *Will. Huddleston* for benefit.

This Court on first hearing forbore to give Judgment, but would advise with

the Judges touching the said Estate made to the Plaintiff, and the Assignment made on the Defendants behalf being both done voluntarily without any Consideration, the one being his Son and Heir, and the others the Defendant *Eliz. Children*, the said *William Huddlestons* Wife born for the most part of them before the Marriage in the Life Time of the Plaintiffs Mother, whether the said Lease for Years ought in Equity to follow and attend the Conveyance of the Inheritance or no.

Two Settlements both voluntary.

*Mat. 29. b. d.
29. d. b. C. D.*

His Lordship with several of the Judges did now declare that he and other Judges also to whom the Case had been put by him were all of Opinion, that it was just to Decree that the said Lease should be brought into this Court, and be assigned over unto the Plaintiff, and decreed the Plaintiff to enjoy the Mannor and Lands in the said Lease, contained against the Defendants, and the Defendants to assign the said Lease to the Plaintiff: And as touching Mrs. *Eliz. Huddlestons* the Defendants Thirds, which she hath recovered at Law against the Plaintiff, and is kept out of Possession thereof.

A Lease made to attend the Inheritance decreed to the Persons Use who had the Inheritance,

His Lordship in regard this Point is not judicially before him cannot make Order therein, the said *Eliz.* having no Bill in Court.

*Huddleston contra Huddleston, 7 Car. 1.
fo. 370.*

*Dower
29. Apr. 217. to 222.*

Commission
to assign
Thirds for
Dower.

THE said *Eliz.* having exhibited her Bill, and therein setting forth that she had obtained several Recoveries at Law for her Dower in the Premises in Question; but the Defendants detain the Possession from her, so that the Plaintiff *Eliz.* hath been kept without her Means since the Death of her Husband. The Defendant insisted that the Thirds allotted unto the Plaintiff out of the Lands in *Yorkshire* was unequal, and Commissioners had allotted her the third Part of the said Lands for her Dower, and therefore she ought to be concluded thereby.

This Court ordered a Commission.

Moor cont. Row, 5 Car. 1 fo. 168:

A Counsellors Bill for Fees, dismissed upon Demurrer.

Fo. 253.

THE Plaintiff being a Counsellor at Law brought his Bill for Fees due to him from the Defendant being a Solicitor, and was to account with him at the end of every Term. The Defendant demurrs. This Court allowed Demurrer *nisi Causa*: Demurrer affirmed, and the Bill dismissed.

Tuphorne

Tuphorne cont. *Gilbie*, 5 Car. 1. f. 357.

This Case is touching an Occupant in Trust.

THAT the Defendant *Gilbie* con- Occupant.
veyed Lands to the Defendants *Heyward* and *South* and their Assigns to the Use of them, their Heirs and Assigns during the Lives of the said *Gilbie* and *Eliz.* his Wife, and to the longer liver of them, with a Proviso, that if the said *Gilbie* shall pay unto *Thomas Bennet* the Intestate 120 l. in Feb. 1628. then the Estate to be void, and the said *Gilbie* to re-enter, and the 120 l. not being Paid, the Estate became forfeited, and the Testatrix *Anne Mansel* having paid divers Debts for the said *Tho. Bennet* for whom her Husband stood engaged; she had the Order of this Court for the Defendants *Hayward* and *South* to convey their Interest to her, which they did; and the Tenants of the Lands having been ordered to pay their Rent, and the Estate of the said *Anne Mansel* in the said Premises hath been settled in the Plaintiff, who is her Executor by the Order of this Court, but there being no Decree in the Cause the Plaintiff hath exhibited this Bill to have the said Estate confirmed to him by Decree.

Bill to have the Estate confirmed by Decree.

D 4

This

In some Cases the Court ordered Possession against an Occupant, but not upon a general Trust.

A conditional Estate *pur autre vie* being forfeited is Assets to pay Debts.

Mar. 29. 72.

This Court with the Advice of Judges and View of Precedents of this Court, whereby in some special Cases the Court hath ordered the Possession against an Occupant, did declare that where in Case of an Occupant upon a general Trust, this Court did rest doubtful how to Decree any Thing upon a Matter of Equity in opposition to a Ground or Rule at Law.

But this Court finds this Case to be much differing from a general Trust upon an Estate granted *Pur autre vie*; this being a Conditional Estate *Pur autre vie* granted as a Security or Pledge for a Debt, which being not paid, the Estate by Forfeiture becometh Assets to the Plaintiffs Hands to pay the said *Bennet's* Debts.

This Court decreed the said Lands to the Plaintiffs and Assigns absolutely, during the continuance of the said Estate for satisfaction of the said *Bennet's* Debts, and Tenants to attorn *Nisi causa*, and none shewed. *Vid. Stat. of Frauds and Perjuries*, as to Estates of Occupancy being Assets.

Winchcomb contra Hall, 5 Car. 1. f. 385.

After twenty Years, and two Purchasers, it's not proper to examine a *non compos mentis*.

THE Plaintiff seeks to have a Conveyance of his Father's Estate set aside, which was made 20 Years since, when he was 80 Years old and *non compos mentis*. This Court was of Opinion and declared that after 20 Years and two Purchasers

chafors, it was not proper for this Court to examine a *Non compos mentis*, and did dismiss the Bill.

Morgan contra Clark, 3 Car. 1. fo. 445.

THAT by consent of the Freeholders of *Kingsthorp* the Plaintiff inclosed Lands there, and the Defendant being Parson of the said Church, and seized in Right of his Parsonage of some Glebe within the Plaintiffs Inclosure. It was agreed between the Plaintiff and Defendant, that the Plaintiff and his Heirs should inclose and keep in severalty the said Glebe; and that the Defendant and his Successors, Parsons of *Kingsthorp*, should enjoy in lieu thereof Freehold of the Plaintiffs, being as good in quantity and quality as the Glebe within the Plaintiffs Inclosures. The Plaintiff exhibited his Bill to have the Inclosures established by Decree: The Defendant confesseth the Agreement; but because it is to bind the Inheritance of the Church, desired a Commission to examine the Quantity and Value of both Lands, that the Church might receive no Prejudice, whereby it appears the Lands in lieu of the Glebe are full as good as the Glebe. This Court decreed the Plaintiff, his Heirs and Assigns, to enjoy the said Glebe in

Inclosures.

*1-Vern. 456.
1-Chanc. C. 40.*

An Agreement about Glebe Lands being inclosed, and the Parson, &c. to have an equal quantity and as good in another Place, decreed, and to bind as well the Parson and his Successors as the other.

in severalty to their own Use, and that the Defendant and his Successors, Rectors of *Kingsthorp*, and all claiming under them, the Defendant and his Successors to enjoy the said Freehold according to the said Agreement.

Barker contra Zouch, 5 Car. I. fo. 202.

Will.
Revocation.

*Gillb. Rep. 1-130,
137, 138.*

THAT the Lord *Zouch*, in June 1617, made his Will in Writing with a Schedule annexed, and thereby directed that his Feoffees in Trust for the Mannor of *Greevil* should make a Lease thereof to the Plaintiff and one *Moor* for 80 Years if either of them should so long live, at 5 s. per Annum Rent, payable to the Executors of the said Lord *Zouch*, and appointed *Edward Montague*, and *Robert Fulnethby*, his Executors, and that many Years after the said Will and Schedule the said Lord *Zouch* being desirous to change his Executors, but fearing that Change might impeach the said Will or Schedule, about two Years before his Death made this *Memorandum* and Schedule at the end of the said Will.

Memorandum, if by Law this my last Will may stand and be in force with this Schedule thereunto annex'd, that I revoke my Executorship of *Robert Fulnethby* and *Edward Montague*, and do hereby appoint

appoint and constitute Sir *Edward Zouch* my only Executor to perform this my Will and Schedule, and after the said *Memorandum* made, resolved to change the Feoffee in Trust of the said Mannor of *Greevil* for some Reasons, and in 1625, caused the then Feoffees or some of them to join with the said Lord *Zouch* in making a Feoffment of the said Mannor of *Greevil*, to the said Defendant and one *Arthur Worth* and their Heirs, to the Use of the said Lord *Zouch*, and the Defendant Sir *Edward Zouch*, and others, until the Lord *Zouch* limit or order new Uses thereof, which he never did, and died, and Sir *Edward Zouch* proved the said Will, &c. but refused to assure a Moiety of the said Mannor of *Greevil* to the Plaintiff *James Barker* according as the said Will and Schedule directed, pretending the said Feoffment being made after the said Will and Schedule was by Law a Revocation of the said Will.

This Court having well advised and considered of this Point was of Opinion that the said Feoffment was in Equity no Revocation of the Plaintiff *Baker's* Moiety of the said Mannor of *Greevil*, but it ought to be settled on him, the said Defendant Sir *Edward Zouch*, having performed some Part of the said Will.

A Feoffment made since the Will no Revocation in Equity.

Lasbrook

Lasbrook contra Tyler, 6 Car. 1. fo. 329.

Alimony decreed, and also the benefit of a Bond before Marriage.

*Eg. Atr. 67. &c.?
1. Vern. 53. -
1. Chanc. 250.*

THE Plaintiff on the behalf of the other Plaintiff *Margaret* his Sister, sought to be relieved against the Defendant *Tyler* her Husband for Allowance to be given her for Maintenance, for all the Time she departed from him, which was a Year and a half, which this Court decreed, and also the benefit of a Bond given before Marriage.

Mayor of *London, &c.* contra *Bennet*
6 Car. 1. fo. 649.

Injunction to stop Suits of Bankers who lent the King Money.

Eg. Atr. 204. 205.

THat King *James* borrowed 100000 *l.* of the City upon their Common Seal, and an Act of Common Council was made in *London* by which the Bonds were to be made in the Names of the Plaintiffs under their Common Seal for Payment of the said 100000 *l.* and Interest, to such Persons as would lend the same, and amongst others the Defendant lent the Plaintiffs at their Request 1000 *l.* for Payment whereof the Plaintiffs became bound in 1500 *l.* and his now Majesty *Car. 1.* borrowed 60000 *l.* more and secured that and the 100000 *l.* by Mortgage; and his Majesty for further Satisfaction of the Lenders Debts and Damages

Damages, agreed to sell Lands in Fee Farm, which was accepted of and yielded to, and an Act of Common Council made, but the Defendants said Debt cannot receive such sudden satisfaction, and the Defendant requires Money not being to be raised so suddenly; and at another Common Council the City used all Endeavours for the raising of Money, and they promised to deal with the Defendant as well as any other of the Lenders, as to the speedy Payment of his Debt; yet the Defendant proceeds at Law against the Plaintiffs upon the said Bond. This Court granted an Injunction.

This Defendant offered divers Reasons against the Injunction, but this Court took of none, there being a Precedent where, in the like Case, an Injunction was granted, and this Court ordered an injunction till hearing.

Peacock cont. Glascock, 6 Car. 1. fo. 656. Max. Eq. 41, 42.

1. Barn. 400, 347.

2. Cha. Ce. 60.

THAT *Weston Glascock*, former Husband of *Anne* the Plaintiffs Wife, about 14 Years since, upon his Inter-Marriage with the said *Anne*, became bound to one *Boosey* in a Bond of 3000 l. to acknowledge a Statute of 2000 l. within six Months after his Marriage with the said *Anne*, unto the said *Boosey*, Defeazanced,

A Statute to make a Jointure, the Comisor left her 52 *l. per ann.* by Will, this is in lieu of her Jointure, and not a voluntary Gift, and the Statute decreed to be delivered up.

zanced, that if the said *Weston Glascock* should not in convenient Time after the said Marriage, before his Death, Convey to the said *Anne* Freehold Lands in *Essex*, of the clear yearly value of 500 *l.* for her Life for her Jointure, then the said *Weston* should leave the said *Anne* at his Death 1000 *l.* And the said *Weston* did by his Will Devise unto the said *Anne*, Lands to her and her Heirs, agreed now in Court to be 52 *l. per Ann.* ; but the said Plaintiff insisted, That the Lands so devised were a voluntary Gift of her said Husband, and not in respect of the said Bond of 3000 *l.* on Joynture, and produced two Witnesses to prove the same.

This Court, nevertheless is clear of Opinion, That the said Lands so devised were in lieu of the said *Anne's* Jointure, and that the said Proofs are but meer Conjectures, and therefore Decreed the said Bond of 3000 *l.* to be delivered up to be Cancelled.

And as to the Lease of 1000 Years of the Lands claimed by the said *Peacock* and *Anne* his Wife, Executors of the said *Weston Glascock*, the same was made over unto the Defendant *Ignatius Glascock*, by the said *Weston*, redeemable on Payment of 373 *l.* and the said *Weston*, by his Will appointed all the Rents and Profits of the

the said Land unto *Ignatius* for Payment of his Debts and Legacies, until the said *Tho. Glascock* shall come to his full Age, and if the said *Ignatius* refuse to give a Bond of 1000 *l.* to his Executors, to pay his said Debts and Legacies, and discharge the said *Anne* of all Debts due unto him, the said *Ignatius*, *Weston Glascock*, or to any other, then the said *Anne* should have the said Rents, Revenues, Goods and Profits of the said Lands, to pay the said Debts and Legacies. Now for that *Ignatius* refused to render the said Bond of 1000 *l.* And for that by his Answer he confesseth the said Lease was made to him in Trust, and as a Security for the said 373 *l.* which if he may have damaged and what Money is owing to him from the said *Weston*, he will Assign the said Lease to the Plaintiffs; and for that all the Debts, and Legacies are to be paid out of the said leased Lands: It is Ordered, That the said Plaintiffs paying first unto the said *Ignatius* his Money due on the said Lease, and what Money is due to him from *Weston* with Damage, which this Court alloweth the said Plaintiff again out of the Rents and Profits with the like Damages, when the said Lease shall be Assigned to the said Plaintiffs, till satisfaction be made to them for the Debts and Legacies, and so for what they shall pay as aforesaid, and

A Lease for Security, and also in Trust decreed to be assigned in Payment of the Money.

and both Parties to Account before a Master.

Lease assign-
ed to pay
Debts and
Legacies the
personal
Estate not
Subject to
the said
Debts and
Legacies.

*L. & A. 295.
290.*

And it is Decreed, That after the said Debts and Legacies paid, the Plaintiffs shall take no farther benefit of the said Lease, but shall Account to the said *Thomas Glascock* the Heir at 21 Years of Age, and declared the personal Estate of the said *Weston* bequeathed unto the said *Anne* by his said Will, shall not be subject or liable to the said Debts and Legacies as aforesaid.

Dean contra Wade, 16 Car. 1. f. 80, 710.

Relief for
the mean
Profits.

TH E Suit is touching Lands, and the mean Profits thereof taken by this Defendant: This Court would be attended with Precedents touching Relief for Mean Profits; The Plaintiff producing a Precedent made between *Drury* and *Drury*. This Court upon deliberate Advice, and reading the Precedent, is well satisfied and is of Opinion, that the Defendant ought to answer the mean Profits of the Premises to the Plaintiff made and rendered by the Defendant, and accrued since the Time of the Bill.

Drury contra Drury, 6 Car. 1. f. 74.

THAT *William Smith* seized of the Mannor of *Coles*, made a Lease of the Demeasne thereof to one *Clark* for twenty Years, and died, leaving the Reversion to descend to the Plaintiff and Defendant *William Drury* his Co-heirs, and that the said *William Drury* hath entred into the whole Mannor, and the said Defendant *Clark* is charged to be behind with his Rent. The Defendant saith, that without the Consent of the Plaintiff he entred upon the Defendant *Clark* for not Payment of Rent, and conceives that thereby he hath wholly avoided the Lease, which being a Point doubtful in Law whether the Lease be wholly avoided, or but for half. This Court referred that Point to the Judges, who certified, that a Writ of Partition be brought between the said Co-heirs.

Writ of Partition between Co-heirs.

One Co-heir entring and avoiding the Tenants Lease, shall answer the Moiety of the Profits to the other Co-heir.

This Court ordered the same according to the said Certificate, and the Defendant *Drury* shall answer to the Plaintiff a Moiety of the Profits of the Premises from the Time of the avoiding the Defendant *Clark's* Lease, according to the just Value of the Lands.

*Comes Newcastle & Eliz. Uxor contra
Com. Suffolk, 6 Car. 1. fo. 644.*

Jointure.
Lease.
Trust.

*Of Jointures, &c.
2 Car. 1. fo. 644.
Attn 217. to 222.*

TH A T the Plaintiff claims the Premises by Deed in 11 Jac. executed by the late Earl of *Suffolk* to Dame *Judith Corbet*, Mother of the Plaintiff's Wife Dame *Eliz.* in Consideration of a Marriage between *Henry Howard* Esq; the third Son of the said late Earl of *Suffolk* and the said Lady *Eliz.* Daughter of the said *Judith Corbet*, and by Fine levied thereupon by the said late Earl and Dame *Katherine* his then Wife, and the Defendant the now Earl of *Suffolk* his Son unto the said Dame *Judith Corbet* with general Warranty to and for the Use and Behoof of the said *Henry Howard* and the said *Eliz.* his then Wife for their Lives in Part of her Jointure.

The Defendant insists that the said Fine and Conveyance ought not to take place, or work upon the said Lands and Premises; for that as touching Part of the Premises, (*viz.*) *Tollesbury, Abshall, &c.* There was a Lease in 3 Jac. made by the said Earl unto *Roger Pennel* his Servant for 50 Years from *Michaelmas* then next, in Trust for the said Countess of *Suffolk*, under which said Lease and Trust by Agreement and Permission of the said Coun-

Countess of *Suffolk*, the said *William Howard* received the Profits of the Mannor of *Tollesbury*, having the Inheritance thereof settled in him by Deed from the said late Earl his Father, and the said now Earl in Avoidance of the Plaintiff's Title to the Mannors of *Abshot*, *Salcot* and *Wigborough*, did alledge the like Lease to be made to *Pennel* upon the same Trust for the said Countess Dowager of *Suffolk*, and that the same Mannors descended to him as Son and Heir to the said late Earl his Father; and it was insisted that the said late Earl had no Estate in the Mannors of *Wendon* and *Westbury* at such Time as the said Fine and Conveyance were made and levied, but that the Interest thereof was then in *Henry Speller* and *Michael Humphrey*, and that Sir *Henry Speller* being Survivor, granted and demised the same to the Lord *William Howard* and *Marmaduke Moor* for 500 Years, and afterwards conveyed the Inheritance to the now Earl of *Suffolk*.

This Court did therefore now declare, that the said Fine wherein the said Countess Dowager of *Suffolk* is a Party, is sufficient to bind the Trust of the said Lease made to *Pennel* being for the said Countess's Use; and howbeit the Estate in Law of the said Mannors of *Wendon* and *Westbury* was in the said Sir *Henry Speller*, yet

Operation of
a Fine to
bind a Trust
of a Lease
made to the
Conisor's
Use.

Signs of a
Trust.

the same was then in the said Sir *Henry Speller* and *Michael Humphry* in Trust for the said late Earl of *Suffolk* and his Heirs; for that it appeared he held the Possession thereof, and disposed thereof at his Will and Pleasure, and of Part thereof made a Lease of 21 Years, and several other Leases, all which Leases did precede the Plaintiff's Jointure, and are yet in being, and it not appearing whether the said Lease of 500 Years made to the said Lord *William Howard* and *Moor* was made before the Commencement of this Suit, or the Process or Letter served touching the same, nor whether the Lessees had any Notice of the said Trust.

Lease made
Pendente lite.

This Court decreed that the Plaintiffs and their Assigns during the Life of the said Lady *Eliz.* shall enjoy all the Lands in the Bill against the Defendants, their Heirs, &c. But if hereafter the Lease of 500 Years shall appear not to be made *Pendente lite*, then it is decreed the said Earl of *Suffolk* shall recompence and satisfy the Plaintiff by reason of the said Lease.

Levington contra Woton, 7 Car. 1.
fo. 360, 388.

Jurisdiction
of the Dutchy
Court over-
ruled in
Chancery.

THAT an Injunction was granted by this Court; it was insisted by the Plaintiff that this Court hath Priority of

of Suit, Sir *Ja. Levington* having exhibited four several Bills in this Court, one for the Execution of a Trust, two against *Carrent*, others to discover secret Estates which had been made, and for producing Letters Patents and Writings touching the Lands in question, and the fourth against the Defendant *Wotton* upon a private Agreement with him, others for a full eighth Part of the whole Land when first the said Sir *John Levington* entertained and presented the Suit to his late Majesty, and the said Injunction being not dissolved, two Informations have been this Term exhibited in the Dutchy Chamber on Claim of divers Acres of Marsh Ground, and an Information by *Dacombe* against the Plaintiff and others on Pretence of a Trust devolved upon him in *Ma--- Carrent*, wherein he is a Competitor for the same Lands with the now Plaintiff grounded upon the same Patent, and to one of these Informations, notwithstanding a Plea and Demurrer thereto, the Relators have obtained an Injunction out of the Dutchy for dividing and plowing the said Lands, and staying of Suits, as well at Common Law as in all other Courts, and Possession to remain with the Relators. And the Lands for which the Plaintiff in this Court prays Relief, are Lands gained from the Sea, and belong

Priority of
Suit in this
Court.

A Reference
from the
King.

as well to the Crown as the Dutchy, and held of his Majesty's Mannors of *East-greensted* and *Enfield* in *Middlesex*, and are granted in Fee-Farm: His Lordship upon reading the Order made in the Dutchy Court, ordered, That if the Defendant do not shew better Matter, this Court will maintain and continue the Injunction granted in this Court; and at the Time of shewing Cause, all the Letters Patents and the Certificate heretofore made by his Lordship, and other Lords Referees unto his Majesty touching this Matter, and all Proceedings both in this Court and Dutchy, are to be ready.

This Court upon reading the Order of the Dutchy-Chamber being as aforesaid to enjoin this and other Courts to stay Proceedings touching the Marsh Grounds, nothing then was said by the Court of the Defendants Competitors and Pretenders to the Marsh Grounds to oppose the Jurisdiction of this Court, but that the same of Right ought to be maintained notwithstanding the Injunction of the Dutchy Court.

Dutchy
Lands granted from the
Crown may
be debated
in Chancery.

His Lordship doth not conceive it any doubtful Question, Whether in Case any Lands (at first being Dutchy, and after granted from the Crown by the King's Letters Patents in Fee-simple or Fee-Farm under the Great Seal and Dutchy Seal)
are

are not upon a Trust and other equitable Causes to be debated and held Plea of in this Court, upon Complaint made to his Majesty on the Plaintiffs Behalf 5 Junii 7 Car. touching the Premises, his Majesty was graciously pleased to refer the Consideration of this Cause to the Lord Keeper, Chancellor of the Dutchy and Chancellor of the Exchequer, who were to take such Course for his Relief as they should think fit in Justice and Equity, which they did, and certified their Proceedings to his Majesty, which Certificate his Majesty approved of.

And his Lordship doth still maintain and continue the Injunction granted by this Court, and granted a new Injunction against all that are since made Defendants; and whereas the Defendants have pleaded the Jurisdiction of the Dutchy Court, and will not answer in this Court, his Lordship over-ruled them all as to the Point of the Jurisdiction of the Dutchy.

Injunction
against Pro-
ceedings in
the Dutchy
Court.

Ordo Curia, 7 Car. I.

TH E Lord Keeper finding much In- convenience and Prejudice to fall upon divers of his Majesty's Subjects, who are Suitors in this Court by the undue Proceedings of such as sue out the Pro- cess of the Court upon Contempts, the

Order.

Process of
Contempt to
be made out
in the pro-
per County
where the
Party is re-
sident.

same oftentimes running out to a Commission of Rebellion, or to a Serjeant at Arms before the Party against whom the Process is made out, hath had Notice of the precedent Process issued forth against him, which is occasioned by reason the Process is oftentimes made into a County where the Party is not resident, and when it is made into the right County by reason of an unusual Neglect, and Want of Care of the Prosecutor to get the same executed, the Sheriff returneth a *Non est inventus*, or a *Proclamari feci*; and sometimes the Return made by others in the Sheriff's Name in an ordinary Course. His Lordship therefore to remedy such Inconvenience and Abuse hereafter, and to prevent the Vexation of the Subject in this Kind, doth think fit and order that all Process hereafter to be made upon any Contempt, be made out in the proper County where the Party, against whom the same Process issueth, shall be resident or dwelling, unless he shall be then in or about *London*, in which Case it may be directed into the County where he shall then be, that it may be served upon him there. And that every Suitor who prosecuteth Process of Contempt against any of his Majesty's Subjects shall do his best Endeavour to procure the said Process to be duly executed,

and

and the supposed Contemners to be apprehended thereby. And if any be hereafter arrested upon a Proclamation or Commission of Rebellion, or by the Sergeant at Arms, and shall make it appear unto this Court, that the Prosecutor hath not done his best Endeavour to have had the first and precedent Process duly executed, then that Party so offending shall pay unto the other very good Costs.

Commission of Rebellion.
Prosecutor to endeavour the first and precedent Process to be executed or else to pay Costs.

Eyre contra Wortley, 3 Car. 1. fo. 314.

TWENTY Marks *per Cent.* Damages allowed till the Performance of the Decree.

Damages.

Petty contra Styward, 7 Car. 1. fo. 93.

THAT the Defendant *Nicholas Styward*, and one *Simeon Styward* whose Executor the Plaintiff is) lent 2500 l. to Sir *Thomas Glenham*, 1450 l. of the said Money being the proper Money of the said *Simeon*, and 550 l. Residue was the Defendant's Money, and for Security the said Sir *Thomas Glenham* mortgaged Lands to the said *Simeon* afterwards, and the Defendant *Styward* and their Heirs, redeemable at a Day prefixt upon Payment of 2630 l. that the said *Simeon* before the Day of Redemption made

Mortgage.

*No. Survivorship
by joint Mortgage
= gees. - 29. Atr.
290. - 1. Falk.
395. - 3. Lav. 373.
1. Vern. 33, 361.
2. Vern. 323.
2. Vent. 365.
&c. - Show. Parl.
Cas. 210.*

made his Will and disposed of the said 550 l. and therein recited that the 1450 l. was delivered by him to the said Defendant his Father, which appeared by a Note under both their Hands; and that if the said Lands should be redeemed by Payment of the said 2500 l. with Interest, then the said 1450 l. with its Interest should be delivered into the Plaintiffs Hands for the Uses in the said Will, the very Day of Redemption the said Lands were redeemed, and the whole Money and Interest paid unto the Defendant, which the said Defendant claimeth by Survivorship.

No Survivorship upon a Mortgage where the Money lent was in Trust, and with Intention that each should have his Money and Interest again.

This Court is clear of Opinion, that by Equity in a Case of this Nature there ought to be no Survivorship, in respect the same was but a Mortgage, and the Money was repaid at the Day, and the Note under both the said Parties Hands, and the Will of the said *Simeon* sheweth plainly a Trust each in the other, and an Intention that if the Money was repaid, either of them should have his Money again with Interest, and decreed the Defendant to pay to the Plaintiff the 1450 l. and Interest so by him received.

*vid. post 262 - Vern. 363, 217, 425,
482. - 1. Cha. C. 127, 230. - 2. Cha. C.
63, 64. L. Winch 59. 2. Cha. C.
Rep. 146 - Vern. 355, 414. Throg-
Show. Parl. C. 10, 19.*

Throgmorton contra Wagstaff, 8 Car. 1.
fo. 59, 154.

TH E Plaintiff seeks to be relieved against Ingagements entered into by him as Surety for the Defendant's late Husband, the said Defendant having sufficient of her Husband's Estate to discharge the same; and the Plaintiff insisted to have Leases for other Lives whereof the Testator was seized at the Time of his Death (and on which the said Defendant entred as an Occupant) to be Affected in Equity.

Occupant.
Affects. *ante* 39.

This Court, in respect the Plaintiff did not get a Case made of this Point by such Time, ordered the Defendant to be discharged of and from the Plaintiff's further Demands. *Vide* for this Point the late Statute of *Frauds* and *Perjuries*.

Sibson contra Fletcher, 8 Car. 1. fo. 529.

TH E Defendant had a Mortgage of the Lands of one *Briscoe* 14. Jac. which Lands the Plaintiff since purchased, which Mortgage-Money was payable three Years after, and the said *Briscoe* hath had the Possession of the Lands ever since the making of the said Deed of Mortgage, till 21 Jac. at which Time he sold to the Plaintiff, who was never interrupted

Mortgage.
Possession
and Equity.

3. Vol. D3-05.
27. 46. 310. 4. 320.
2c.

Presumption
by Circum-
stances that
nothing is
due upon
a sleeping
Mortgage,
and decree
the Mortgage
Deed to be
cancelled.

post 105, 120, 104.

rupted till now of late, the Defendant sets the Mortgage on Foot, pretending the Mortgage-Money was unsatisfied. Now for that the Defendant did not upon the Plaintiff's Purchase, though he saw the Possession altered from *Briscoe* to the Plaintiff, make any Claim to the Land, nor give any Notice of his Mortgage; and the Defendant hath since purchased Land of *Briscoe* and paid him Money, so as all Presumption this Mortgage-Money is satisfied, and Possession hath been 17 Years in *Briscoe* and the Plaintiff.

This Court was fully satisfied, that there is nothing due on the said Sleeping Mortgage, and decreed the Deed of Mortgage to be delivered up to be cancelled.

Stoit contra Ayleff, 8 Car. 1. fo. 530.

Coverture
Debt.
Promise by
an Husband
to a Wife to
pay her
100 l. void;

*3. Vol. B. 94, 228. &c.
ante 26. post 60.*

TH E Defendant after Marriage of his Wife promised Payment to her 100 l. and since they are separated, the Plaintiff's Bill is to charge the Defendant with the 100 l. but the Debt being Sixteen Years old, and the Promise made by a Husband to a Wife, which this Court conceiveth to be utterly void in Law, and would not relieve the Plaintiff.

Hardin

Harding contra Countess of Suffolk,
8 Car. I. fo. 502.

*Annuity.
Rent Charge &c.*

ante p.

*post 102, 110, 145,
148, 212.*

THE Plaintiff's Suit is for a Rent-
Charge of 200 l. per Annum granted
by the late Earl of Suffolk with the Pri-
vity and Consent of the said Countess
on March 7 Jac. to Sir John Townsend
deceased, during the Life of the Plaintiff
Katherine, to be issuing out of the Man-
nor of Walden in Trust, and for the Use
of the Plaintiff Katherine, which Annui-
ty was duly paid with the Consent of
the said Countess all the Life-time of the
said late Earl; but the Countess after the
said Earl's Death sought to avoid the
said Annuity, pretending a precedent Lease
made by the said Earl, 4 Jac. for many
years yet to come to certain Persons in
Trust for the said Countess of the said
Mannor and Lands out of which the said
rent issues; and because the Premises
charged with the said Rent lay intermixt
with the Plaintiff could make no Distress
for Recovery, the Plaintiffs are remediless
at Law.

For avoiding which Lease the Plaintiff
produced a Fine levied by the said late
Earl, and the now Earl in Mich. Term,
8 Jac. of the said Mannor and Lands
of Walden; and though no Indenture
could

could be produced to lead the Use of the said Fine, yet they all alledged, that the said Fine was to the Use of the said Countess for her Jointure, and that she enjoyed the same by Virtue of the said latter Conveyance, and not by the said Lease, and so the said Rent-Charge ought not to be impeach'd; and it did not appear that the said Lessees for the Countess ever made Entry or Claim by Virtue of the said Lease since the Fine.

Consideration for a
Rent Charge.

*ante 12, 35.
post 14 P.*

This Court at the first hearing upon this Matter, declared, That the said Lease and Fine were both considerable, it being then objected, that howsoever it were the Plaintiff ought not to be relieved in Equity, for that there was no Consideration for the said Rent-Charge which might move a Court of Equity to relieve the Plaintiff any further than the Law would relieve him.

The Lord Keeper took Time to peruse all the Pleading in this Cause before he would deliver his Judgment.

Then the Plaintiff petitioned the King's Most Excellent Majesty, who referred the Consideration thereof to the Lord Privy Seal, and some others of the Lords of the Privy Council before whom the Matter was debated at large; but no Effect being made by them, the Plaintiff petitioned

*Note this reference
by the King to the
L^d Privy Seal &
other Lords of the
Privy Council; &
see Will. Jus Appell. 69. 115. & 2. Wm Jus
Appell. 35.*

petitioned the Lord Keeper, informing him of the said Reference, and that it appeared to the Referees, that the Countess had an Indenture made by the late Earl to lead the Uses of the said Fine, and that the said Lords Referees were of Opinion, that the said Indenture being material, should be produced by the Countess, which the Lord Keeper ordered to be brought into Court, which the Countess still refused to do; so the Lord Keeper and Lord Privy Seal now hearing the Cause upon the Merits thereof, and having maturely advised thereof, are clear of Opinion, That albeit no Cause were proved, yet in respect the Plaintiffs Suit is upon a Trust, they may and ought to be relieved, for that the Suit is not to make up or amend any Validity of the Deed in Point of Law, the Deed being valid and good enough; but the Suit is to have the Trust performed, for which the Plaintiff cannot sue at Law, and to be relieved against the confounding of Metes and Bounds, so that one Mannor is not known from the other, which is usually relieved in this Court: But as touching the said Lease their Lordships declared, That if it could not be impeached, the Plaintiff could not be relieved. Their Lordships conceived that unless some Entry or Claim were made to avoid

Relief about
the confound-
ing of Metes
and Bounds.

avoid the said Fine in 13 *Jac.* the said Lease in 4 *Jac.* is thereby bound up in Law, and cannot be set on Foot to avoid the Plaintiffs Rent Charge, so that the Plaintiff ought to be relieved in Equity, both against the said Rent-Charge and Arrears. But their Lordships further declared, that if the Countess bring in the said Lease and Deed, and can thereby avoid the Fine, then that may alter the Case; but if she cannot avoid the Fine, then it must be decreed as aforesaid.

And their Lordships order'd the Countess should leave, with the Register of their Court, the Points on which she will insist for avoiding the said Fine, or upholding the said Lease against the said Fine, and both Parties to prepare for that Purpose and their Lordships declared, that if a Decree shall pass against the Countess and she not yield Obedience thereto then all the Mannor of *Walden* shall be subject to a Sequestration for the satisfying of the said Decree.

That the said Deed and Lease being produced, and the Defendant's Points to avoid the Fine being as followeth (*viz.* in these Words.

The Countess having Lands of good Value of her own Inheritance and dowryable of the Earl's Lands, joined in a Fine at the Earl's Request of her own Land, and

Sequestration for not yielding to a Decree.

35, 53, 100, 240.

2-1st. 224.

1. Point.

Part of his Land ; in Lieu whereof the Earl made a Lease of divers Lands in *Com. Essex* to *Roger Pennel* for divers Years yet in being, in Trust for the Countess, and after granted the said Rent-Charge unto Sir *John Townsend* of Part of the said Lands leased. The Earl died, this Rent is neither in Law nor Equity, as the said Countess conceiveth to be laid on the said Lease-Lands during the Lease.

The Earl during his Life, and the Countess since his Death, enjoyed the Lands so leased by Permission of the said *Pennel* as Tenant at Will to him ; in which Case no Fine levied by the Earl can debar *Pennel*, and not like to *Saffynes* Case, where the Termer is put out of Possession, and then a Fine levied, in which Case he is tied to claim, but not here.

2. Point,

Fine barring a Term,

Also (though it needed not) *Pennel* within the Five Years made Entry and Claim.

3. Point, Entry and Claim.

The Earl being seized of some Lands in Possession, and of the Lands leased to *Pennel* in Reversion levied a Fine of both. This Fine works distributively for Part in Possession, Part in Reversion, and doth not turn the Estate of *Pennel* into a Right, and consequently doth not enforce him to any Entry to avoid the Fine.

4. Point,

Estate turned to a Right,

5. Point.

The Countess within Five Years after the Fine in the behalf of the Lessee, made Entry and Claim, and did the like within Five Years after the Earl's Death.

And the Countess being heard upon the said Points, none of them could be proved, nor could prove that *Pennel* ever sealed a Counterpart of the said Lease, or ever accepted of the said Lease, or ever so much as knew that the said Lease was made unto him, or that *Pennel* ever had Possession of such Part of the Premises as were out of Lease, or that he or any for him made any Entry into the same, nor that he received or claimed by Virtue of any Lease or Estate made to himself any Rents of such Lands contained in the said Lease, as were demised to Under-Tenants but such as he received, he received as Servant to the Earl.

Eq. Att. 255, 256. &c. So upon the whole Matter their Lordships declared the Points insisted on by the said Countess to avoid the said Fine, and support the said Lease, were not made out, and are of Opinion that the said Lease was a sleeping Lease, and that no Fruit or Use was made thereof, either before the said Fine or after, and is bound up in Law by the said Fine and Proclamation and Non-claim of *Pennel*, and cannot be set on Foot to avoid the Plaintiffs Rent-Charge, but the Possession which

A sleeping Lease the Lessee not knowing of it, or accepting it, and was never in Possession bound by Fine and Non-claim.

ante 51, 65.

the Countess had of the said Mannor since the Death of the said Earl, and now hath, is by and under the said Fine, and the Indenture leading the Use thereof, directed by the Indenture of Uses now produced, by which the same are limited to the said Countess for Life in Remainder after the said Earl for her Jointure; and therefore the Plaintiff ought in Equity to be relieved, both for the said Annuity and Arrears, and decreed the same accordingly.

Relief for
Annuity and
Arrears.

*ante p. post 102,
110, 145, 148, 212.*

Rigault contra Clobery, 9 Car. 1. fo. 730.

THIS Cause being Matter of Account, was referred to Commissioners to determine, which they could not do without the Plaintiffs Attendance, it was prayed that his Lordship would grant the Plaintiff Liberty to attend the said Commissioners.

His Lordship considered that he cannot grant any other than Day-Writs. It being resolved by the Judges, that granting Liberty to Prisoners in Execution by other Writs is against the Law; but his Lordship is content he shall from Time to Time have such and so many Day-Writs as shall be needful for his Attendance on the Commissioners without paying any Fees, either for making or sealing of them.

A Prisoner
in Execution
shall have so
many Day-
Writs as are
needful to
attend Com-
missioners.

Plomer contra Dominam Plomer, 9 Car. 1.
fo. 457.

On Payment
of 100 l. the
Defendant's
Daughter
snatcheth a-
way 20 l. the
Plaintiff
shall not be
chargeable
with it till
recovered a-
gainst the
Daughter,
and an In-
junction for
the Plaintiff
accordingly.
Baron and
Feme live a-
part, the
Husband
shall not be
charged with
his Wife's
tortious tak-
ing of Mo-
ney.
The Wife or-
dered to an-
swer, or Pro-
cess of Con-
tempt.

*ante 26, 60.
V. 3. p. 91,
223, V. 2.
416, &c.*

THE Plaintiff bringing 100 l. to pay to the Defendant, one *Margaret Smith*, the Defendant's Daughter, snatcheth 20 l. out of the 100 l. and went away therewith; the Defendant would enforce the Plaintiff to pay the said 20 l. pretending so much due to her by the Plaintiff.

This Court saw no Cause to charge the Plaintiff therewith, and for that the said Defendant *Margaret Smith* liveth apart from her Husband, and hath so done for many Years, and will not answer the Plaintiff's Bill, this Court would not charge her Husband with the said 20 l. in regard of their living apart, but that the said *Margaret Smith* ought to answer the same; and ordered that the Defendant *Lady Plomer* shall not take Advantage against the Plaintiff for the same; but expect till the Plaintiff can recover the same from the said *Margaret*, and the Plaintiff is to prosecute the said *Margaret* with Process of Contempt for her Answer, and granted the Plaintiff an Injunction against the Defendant.

Lake contra Philips, 9 Car. I. fo. 135.

THE Defendants have pleaded the Privilege of the Court of Exchequer, and that they ought not in respect thereof to be drawn to answer the Plaintiffs Bill in this Court, albeit the constant Precedents of this Court were to the contrary.

This Court ordered the Defendants to shew Cause why the Plea should not be overruled.

The Defendants produced a Precedent in 16 or 17 *Eliz. Nott contra Hutton*, and the Lord Keeper declared he had heretofore seen that Precedent, but had also seen very many Precedents in this Court to the contrary; but however it were in Point of Precedent, yet the Defendants Plea being insufficiently pleaded, therefore and for that neither by Law nor by any Precedent any more than only one Plea is to be admitted to the Jurisdiction of a Court; therefore in this Case the Plea being insufficiently pleaded the Defendant ought to answer; besides, this Suit at the exhibiting of the Bill was a joint Suit against Sir Nicholas Fortescue, who for ought appearing, had no Privilege in the Exchequer; and though Sir Nicholas Fortescue being dead, yet when the Court was at the first duly

F 3

and

Plea of Privilege

1. Ro. 374. pl. 12.

12. Co. 113.

post 106, 140, 103,

270.

2. Vol. 196. &c.

pl. 100 & 101.

100. 101. 102.

103. 104. 105.

106. 107. 108.

109. 110. 111.

Plea.

Jurisdiction.

See 4. Earl of

Daferds case

4. Argum.

at 4. end of 4.

Vol.

Privilege.

Plea of Privilege in the Exchequer to draw a Cause from this Court overruled.

post & ante 69.

*of Doctors report
nant &c.*

Equity abr. 362.

1 Burr. 214.

2 Cha. C. 161.

and lawfully possess of the Plea, his Death ought not to give any more Privilege to the other Defendants to draw the Cause from this Court than they should have had at the beginning, or while he lived; and therefore his Lordship doth adjudge the Defendants Plea to be insufficient, and ordered the Defendants to make a direct Answer to the Plaintiffs Bill in this Court.

*Kennedy contra Dominam Vanlore,
9 Car. I. fo. 193.*

THIS Case is upon a Plea and Demurrer (*viz.*) That the Plaintiff by his first Bill pretending that Sir Jo. Kennedy his Brother had transferred his Right in equity touching the Lands in question to him, and prayed Relief in Equity against *Ferrers, Goffson* and *Johnson*, who sold the said Lands by virtue of the Decree of this Court, and against Sir *Peter Vanlore*, who purchased the said Lands, which Bill in Oct. 19 Jac. was dismissed: After which, Sir Jo. Kennedy being dead, and the Plaintiff insisted himself to be relieved, both by the said Deed and as Heir and Administrator to his said Brother, did 21 Jac. exhibit his Bill against the said Sir *Peter Vanlore* in his Life time to be relieved for the said Lands, or the Overplus

plus of the Value thereof: To which Bill the said Sir *Peter* put in his Plea and Demurrer, setting forth the several Orders and Decrees touching the same, and the Purchase and Consideration by him paid, being 10000 *l.* for a Reversion depending upon the Life of the Lady *Erer*, which Plea and Demurrer was reported insufficient by a Master of this Court; yet at arguing the same afterwards in this Court the said Plea and Demurrer was 25 Feb. 22 Jac. adjudged sufficient, and the Bill dismissed, and Dismission signed and enrolled, after which the said Sir *Peter* by Deed 3 Car. conveyed the said Lands to the Defendant, the Lady *Vanlore* his Wife, during her Widowhood, and after to his Children and Grandchildren, many of them Infants, and after died. After which the Plaintiff exhibited another Bill against the said Lady *Vanlore*, and Sir *Edward Powel* for the aforesaid Lands, and also 2 Mills, and 50 Acres of Meadow, which the Plaintiff insists was not in Sir *Peter Vanlore's* Purchase made from *Ferrers*, *Gosson* and *Johnson*, and also for 2000 *l.* which the Plaintiff insists that the said Sir *Peter* did not pay of his Purchase Money which is still in Sir *Peter's* Hands. To which Bill the said Defendants pleaded and demurred as aforesaid, and the Master again reported the same insufficient,

yet the Court again adjudged the same sufficient, and dismissed the Bill.

Since which the Plaintiff exhibited a new Bill against the Defendants, and the Children and Grandchildren of the said Sir Peter for the said Lands, Mills, Meadow, and the 2000*l.* To which they pleaded as before; and the Master reported the same insufficient, and thereupon the Cause was debated and heard at large; and the first Day of *June* an Order was made reciting the whole Substance and Progress of all the Business and Proceedings in this Court touching the said Lands at *Tunbridge*, as well in the Time of the now Lord Keeper, as in the Times of his Lordship's Predecessors, the Lord *Elefmere*, Lord *Verulam*, and the Lord Bishop of *Lincoln*, by which it was then ordered, That the Plaintiff should by the first Day of the last Term produce Precedents where this Court hath heretofore given Relief for Matters in Equity mentioned in Orders before any judicial Order and Decree made for Recovery thereof; and also to search whether the Decree mentioned in the said Order were signed and inrolled, and shew what Matter he could for maintaining this Bill.

Decree signed and inrolled.

The main Points now insisted on by the Plaintiff to maintain his Bill were, That Sir Peter *Vanlore* was no Party to the

the Suit between Sir Jo. Kennedy and the Feoffee, and that Sir Peter came in and purchased *pendente lite*, and that the Lands were not sold at a full Value as they were then worth at the Time of the Sale, and that the said Lord *Elefmere* was not acquainted with the Purchasors according to the intention of the former Orders; and that the Decree whereupon the said Sale was grounded was after reversed; and that upon a Hearing before the late Lord Chancellor *Bacon*, being then assisted by the Lord Chief Justice of the Common Pleas, and Mr. Justice *Dodderidge*, the Court was of Opinion, that Sir Peter should have his Money again, but not the whole Benefit of his Bargain; and therefore it was then decreed, that Sir John Kennedy should pay as well the said 10000*l.* Purchase Money, as also so much as Sir Peter paid to the said Lady *Ewer* for the Possession, with Interest within a Year following, or else the Lands were decreed to the said *Vanlore*, which Decree not being drawn up and inrolled, a Commission was ordered to issue to survey the said Lands, and Sir Peter to be paid what he was out of Purse with Interest, either by some Part of the Lands or Money. And the Plaintiff also insisted that the said Lands were

Decrees contrary.

worth

worth 1200 *per Annum*, and that Sir Peter paid but 10000 *l.* for the same, and many other Reasons were offered by the Plaintiff for maintenance of the said Bill. But his Lordship having heard the Matter debated at large, and advisedly considered of the Orders which were made in the Times of his Predecessors, doth find that because the Lord *Elsmere*, who decreed the Lands to be sold, did by his Order provide that his Lordship should be made acquainted with the Sale and Purchasors, that the Lands might not be sold at an under value, and because there is no Notice made appear, therefore it is alleged that the Purchasors came in *pendente lite*, whereas by Order of 4 Dec. 13 *Jac.* that because the Order for Sale of the Lands was not an absolute Order and Decree, the Purchasors would not deal, and then the Lord *Elsmere* made the said Order an absolute Decree, and thereupon the said Lands were sold to the said Sir Peter, upon which his Lordship conceiveth that the Lord *Elsmere* took Notice of the Sale and Purchasors. And this Court finds that the Lord *Bacon* undertook the Cause as an Arbitrator only and awarded Sir *Jo. Kennedy* to pay Sir Peter 17000 *l.* or else Sir Peter to enjoy the said Lands; which Arbitrament notwithstanding by Sir *John Kennedy* the Matter was

was heard in open Court again, and the Lord *Bacon* being assisted with the Judges aforesaid, it was decreed that Sir *Jo. Kennedy* should pay to Sir *Peter Vanlore* his Money with Interest in a Year, or else the Estate of Sir *Peter* was thereby decreed; which Decree Sir *Jo. Kennedy* did not draw up nor inrol, and the said Sir *Peter* conceived he had no Cause to do it, and this Court finds by the Order of 23 Jan. 17 Jac. by which Sir *Peter* was to take a Proportion of Land for his Money, upon a Survey to be taken, was made by the said Lord *Bacon* alone without Consultation had with the Judges, who assisted his Lordship formerly, and was repugnant to the Decree made by the Court, assisted as aforesaid, without a Bill of Review: And so this Court sees no Cause why the said latter Order should be any Ways binding.

Decree repugnant to a former Decree without a Bill of Review.

This Court therefore in regard of the Decrees and Dismissions aforesaid, and in regard the Defendants claim under Sir *Pet. Vanlore*, and have had so long Possession, and he claimed as a Purchaser for valuable Considerations by the Decrees of this Court, and his Estate established by so many Decrees as aforesaid. And for that, the Mills, and 50 Acres of Meadow which the Plaintiff claims, pretending they are comprized in the general Words of the original Conveyance under which the

A Purchaser for valuable Considerations.

A Purchaser of a Reversion shall not be drawn to take his Money with Interest, if the Life die, notwithstanding the pretence of *pendente lite*.

Payment of Money barred by the Statute of Limitations.

the Plaintiff claimeth, it sufficiently appears that the same were not comprised in the said Plaintiffs Conveyance; but were conveyed upon a second Purchase thereof, made by Sir *Peter* of the Lady *Hunsdon* for valuable Considerations, and for the main Purchase the same was but a Reversion depending upon a Contingency; and if the Lady *Ewer* had lived, as by course of Nature she might, the said *Vanlore* had had a very dear Bargain; and besides, this Court doth conceive that it stands with the Rule of Justice, that if Lands be bought in Reversion expectant upon Death, and the Tenant for Life die, a Purchaser by the Decree of this Court, after such Proceedings as aforesaid, shall not then be drawn to take his Money again with Interest notwithstanding the pretence of *pendente lite*; and that this Suit is not well brought: And as for the 2000 *l.* if it were not paid by Sir *Peter* to the said *Ferrers*, &c. it is barred by the Statute of Limitations.

Marsh contra Kirby, 10 Car. 1. fo. 253.

THAT *Julius Marsh* deceased by his Will devised the Rents, Issues and Profits of all his Messuages during his Interest therein to his Wife for Life, and if she died before the Expiration of his said

said Interest then the same to come amongst all his Children equally, and that his Wife should not sell. And the said Testator conceiving his Wife to be with Child, devised to the Child, she then went with, a Lease of two Houses, and ordered a Moiety of the Profits thereof to be put out by the Overseers of his Will as a Stock for the Benefit of such Child, and the other Moiety for her Maintenance till Age or Marriage. And by his Will farther declared, that if all his Children should die before Marriage or Age of 21 Years, then the Premises devised to his Children should remain to Brothers and Sisters Children; and that four of the Testators Children died before Marriage or the Age of 21 Years. And *Alice* who was not born at the Time of the Testators Death is only living.

A Child not born at the Testators Death shall have the Profits of Lands by the Devise.

This Court on reading the Will doth conceive that the collateral line have nothing to do with the Estate of the Testator during the Life of the said *Alice* the Daughter, and dismissed the Plaintiffs Bill.

Lake cont. *Lake*, 10 Car. 1. fo. 246.

THIS Case is touching a double Portion. This Court conceived the 500 l. was included in the Will, though charged by Deed on Lands.

Double Portion.

*double Portion
vide 2 Vol. 3
112. Contra*

Coles

Coles cont. Emerson, 10 Car. 1. f. 170.

Bond.

*Vide infra & post
88.*

Antiquity.

*max. Equity
39. post 105*

TH E Bill is against a Bond of 60 *l.* entred into in *Anno 1612*, to pay 30 *l.* at 9 Days end, which was never sued till now, although the Defendant was always Necessitous and a Prisoner, and the Plaintiff a Man of Worth.

This Court conceived the said Money to be satisfied, it not being demanded in 22 Years, and decreed the Bond to be delivered up to be cancelled.

Carpenter cont. Tucker, 10 Car. 1. fo. 228.

Bond vide supra

TH IS Case is touching a Bond of 100 *l.* entred into 9 *Jac.* to *Charles Tucker* deceased, which is 22 Years since, which Bond was left in the Hands of one *Orpwood*, as a void Bond, the Money thereby payable being long since satisfied, as the Plaintiff insists; forasmuch as the said Bond is of such Antiquity, and the Defendant *Tuckers* Father, the Obligee, lived till about 7 or 8 Years past, and never demanded the Money, nor had any Interest therefore, and the Bond is but lately come to the Defendant *Tuckers* Hands, who is his Father's Executor.

This Court doth conceive that the said Bond hath been satisfied, and ought not either

either in Equity or good Conscience, after so long Time, to be put in Suit against the Plaintiff, and decreed the same to be cancelled, and if Judgment entred thereon, the same to be vacated.

Bond ancient, and no Money demanded or interest paid decreed to be cancelled. *Eq. ab. 84. 854. max. Eq. 39. vide post 88*

Domina Savil cont. Savil, 10 Car. 1. fo. 45.

THE Bill is to discover the personal Estate of Sir Henry Savil, deceased, late Husband of the Plaintiff Dame Mary, and to have her Moiety of the same, according to the Custom of the Province of York. It is observed, that when any one living or dying within the said Province, hath a Wife and no Child at his Death, being possessed of a personal Estate of Goods, they are to be equally divided into two Parts, the one Part whereof to the Party dying without Issue, and the other Part to his Wife, over and above her Jewels and wearing Apparel; and the Plaintiff also prayeth relief against an Assignment of certain Mortgaged Lands, unduly gotten from her Husband a little before his Death.

Custom of York, as to the personal Estate of one dying within that Province.

100 Col. 2. 254. 257. 258.

The Lord Keeper after deliberate hearing of the Matter and Proofs, took Time to advise touching the Custom, and heard the Counsel several Times, and having taken all the particulars of the Cause into Consideration, and finding the demands to be

be great on both Sides, and the Parties wholly submitting the same to his Lordship, his Lordship decreed that the said Defendant *John Savil*, shall pay to the Plaintiff the sum of 900 l. in full satisfaction of all Demands upon the said Bill. *Vide* a late Statute 4 *William and Mary*, this Custom altered.

Construction of wills

Revet cont. Rowe, 10 Car. 1. fo. 405.

Ante. post 250,

287. see Gilbert.

R. 5. 11. 44. 45.

111, 129 to 138.

255, 265. 2 vol.

105, 111, 190, 211.

84 3 vol. 86,

150 to 177, 209 to

213

TH E Suit is to be relieved touching the Evidences of certain Houses and Lands in *Tottenham* and *Felixtown*, the moiety of the Rents and Profits of a House in *St. Bartholomew's*, and the sum of 1300 l. and the Profits thereof, and other Things.

The Case is, That Sir *John Haywood* being seized in Fee of certain Houses and Lands in *Tottenham*, settled the same on his Daughter *Mary* and the Heirs of her Body, and for default of such Issue, the remainder to him the said Sir *John Haywood*; that the said *Mary* his Daughter Married with the Defendant Sir *Nicholas Rowe*, and had Issue by him *Mary* her Daughter, and dyed, which said *Mary* the Grand Daughter to Sir *John Haywood* dyed without Issue, and so the said Lands in *Tottenham* do belong to the Defendant Sir *Nicholas Rowe* (as Tenant by the Courtſie

Curtesie of *England*) and the said Sir
Jo. Hayward being seized of the Reversion
of the said Lands and Houses in *Totten-*
ham in Fee to him and his Heirs, by Will
devised the same (if his Grandchild died
without Issue) to his Wife during her
Life, in Case she should be alive after the
Curtesie determined ; and that after her
Decease, or if she should not then be
living, then to the Plaintiff being his only
Sister's eldest Son, and to the Heirs of his
Body. And devised his Lands in *Felix-*
town in Com. Essex both Fee and Copyhold,
to his Wife for Life, and after to the said
Mary his Grandchild, and the Heirs of her
Body ; but if she should die without Heirs
of her Body, then the same to the Plain-
tiff, and to the Heirs of his Body, and
surrendered the said Copyhold to the Use
of his Will ; and the said Sir *Jo. Hay-* Will,
ward being possesst of a Lease of a House in
Great St. Bartholomews, devised the same to
his said Grandchild *Mary*, in case she should
be then living at the Time of his Decease,
otherwise he gave the same to the De-
fendant *Hanchet*, whom he made sole Exe-
cutor, with Proviso in case his Grandchild
should be living at the Time of the said
Sir *John's* Decease, that then his Executor
should account to the said Grandchild for
the Profits and Rents of the said House,
as to one Moiety of the same, at the Age
G of

of 21 Years or Marriage, and the said *Hanchet* to retain the other Moiety to himself; and the said Sir *Jo.* having a Mortgage of 1300 *l.* upon some Lands in *Kentish Town*, desired in his Will that his Executor should purchase the same out of the Residue of his Estate, and then did give the same to his said Grandchild and the Heirs of her Body, and thereby also desired his Executor to apply the Profits thereof to the Performance of his Will, and the Benefit of his said Grandchild, and account to her for the same at the Age of 21 or Marriage, retaining 20 *l. per Annum* for his Pains therein; and if his said Grandchild *Mary* died without Heirs of her Body, then he devised the same to the Plaintiff and the Heirs of his Body, and the Account thereof to be made to him the said Plaintiff or his Heirs; but in Case the said Purchase should not be made, then his Executor should take the said 1300 *l.* and apply the same for the Benefit of the said Grandchild, and be accountable to her for it at the Age of 21 or Marriage, reckoning himself 20 Marks *per Annum* for his Pains, and if she died before Marriage, then he devised the said Money and Profits to such Uses as in his Will, and gave all his Books, and a Moiety of the Residue of his Goods and Chattels and Debts to his said Grandchild in Case she should

should be married, and the other Moiety to the Plaintiff, and soon after the said Sir *Jo. Hayward* died, and the said *Hanchet* his Executor possess himself of the said 1300 *l.* as also of the Books and other personal Estate of Sir *John's*. Since which Time the said *Mary* the Grandchild died before her Marriage or 21 Years of Age, by Reason whereof, and of the said Will the Plaintiff claimeth the Deeds and Writings of *Tottenham* and *Felixtown*, as also the Moiety of the Rents and Profits of the House in *St. Bartholomews*, which ought to have been accounted for to the said Grandchild, and also the 1300 *l.* on the Mortgage and the Profits thereof, as also the Books and Moiety of the Residue of the other Goods, Chattels and Debts.

This Court assisted with Judges on perusal and due Consideration had of the said Will, are clear of Opinion, that 1300 *l.* and the Profits thereof since the Death of the said Grandchild, as also the Books and Residue of the Goods, Chattels and Debts of the said Sir *Jo. Hayward* do in Right and Equity, according to the said Will belong to the Plaintiff, and that the Lease of the House of *St. Bartholomews* belongs to the Defendant *Hanchet* the Executor, and decreed accordingly.

Construction
of a Will.

*Vide ante 80
post 250. 287*

*Equity ab. 152.
C. 2. 2 L. 30. 130*

He

*Rationabili
parte.
Custom of
London good
against a
Deed of
Trust to the
Use of the
last Will.*

Nott contra Smithies, 10 Car. 1. fo. 402.

THE Suit is to have proportionable Part of a Lease, and the Profits thereof according to the Custom of the City of *London*, the which the Testator *Edward Sewster* the Plaintiff's Father by his Will hath directed the Defendant's *Smithies* his Executors to convey the same to the Defendants *George* and *Edward Sewster* his Sons.

This Court, on reading the Deed made to the said Executor, whereby it appear'd it was in Trust to the Use of the last Will of the said Testator, declared that the said Deed of Trust made to the said Executor, is contrary to, and against the Custom of *London*, and that the Plaintiff *Eliz.* being Daughter, ought according to the Custom to have her Part of the said Lease and Profits thereof.

Scot contra Wray, 10 Car. 1. fo. 348.

*Award defective
made good. see
max. Eq. 53 to
60. Ant. 2.
Chap. R. 24,
366. 3 Cha.
R. 20.*

THE Parties in this Cause did refer the Differences between them to Arbitrators, who made their Award, by which Award it was awarded, That *Roger Whittey* should have such and such Lands; and it was provided by the said Award, that if any Doubts arose, the Arbitra-

bitrators to interpret and expound the same. That the Defendant *Wray* found a Defect in the said Award (*viz.*) that the said *Roger Whitley* should have the said Lands, and not that the said *Roger Whitley* and his Heirs should have the said Lands; so it was insisted that the said *Roger* had but an Estate for Life, whereupon three of the four Arbitrators only living, by a Writing under their Hands and Seals did declare they meant the Lands to the said *Roger* and his Heirs for ever, and that the Word (*Heirs*) was left out by a Mistake; that the said *Roger* being in Possession of the said Lands, conveyed the same to the Plaintiff *Scott* and his Heirs.

The Defendant claiming by the old Deed of Entail, seeks to eject the Plaintiff out of the Premises.

This Court, upon the Perusal of the said Award and Explanation thereof, and of the Depositions of two of the said Arbitrators, who are all that are living, who depose that it was intended that the said *Roger* and his Heirs for ever should have the Land, considering that the Award was long since made and executed on both Parts. And his Lordship calling to his Assistance Mr. Justice *Crook* and Mr. Justice *Crawley*, two Reverend Judges, took their Opinion touching the

A defective
Award as to
Lands made
good, and
decreed a Fee
though there
wanted the
Word *Heirs*
in the A-
ward.

post 141, 142.

Vol. 3. 20.

Vol. 2. 94, 304

Point in Question for decreeing the said Award and Explanation thereupon; the Arbitrament being voluntary and without the Direction of this Court, but executed on both Sides, are all clear of Opinion, That this Court ought in Point of Justice and Equity, to ratifie and confirm the same by Decree accordingly, and that the Plaintiff *Scott* and his Heirs do enjoy the said Lands against the Defendants, and all claiming, &c. according to the said Award and Explanation as aforesaid.

Byat contra Pickering, 10 Car. 1. fo. 767.

Jurisdiction
of Cambridge
maintained.

post 140, 183.

278

THIS Court declared the Privilege of the University of Cambridge ought to be maintained, and not to be infringed by this Court.

*Bates contra Micklethawit, 10 Car. 1.
fo. 869.*

Will.

THAT Dr. *Bates* by his Will appointed that his Estate being 2500*l.* be divided into Two Parts, and bequeathed one Half thereof to the Plaintiff, and the other to the Plaintiff's Son an Infant, out of which Estate 700*l.* was in Bonds taken in the said Infant's Name.

The

Bonds taken
in a Devisee's
Name, yet
to be a Part
of the Te-
stator's Estate
disposed by
his Will, and
to be divided
accordingly,

Eq. No. 25.

Eq. 11. 25.

Bond to procure a Marriage decreed to be canceled.

led. 6. Vol. 31.
39. iter. 100. 1797.
90.

Geofrey contra Thorn, 10 Car. 1. f. 590.

An old Bond
and never
sued, decreed
to be can-
celled.

*ante 70, 71.
post 139.*

A Bond of 300 *l.* Penalty without a Condition, entred into by the Plaintiff to the Defendant, to save the Defendant harmless against a Bond of 200 *l.* the said Bond being 23 Years old, and not sued in that Time, decreed to be delivered up to be cancelled.

*Blackwel contra Redman, 10 Car. 1.
fo. 609.*

*Frauds in gaming
etc.*

Gillb. Rep. 2, 4,

3. Vol. 99.

2. Vol. 33.

post 132, 136.

29. Nov. 130, 135.

THAT the Plaintiff being a Linnen-Draper, was by the Defendant drawn to play at Dice at the House of the Defendant *Axtel*, and that the Defendant *Buller* having won about 50 *l.* of the Plaintiff, which was done by false Dice brought thither by the Defendant *Redman*; the Defendant *Redman* did lend to the Plaintiff several Sums of Money, amounting in all to Forty Pounds, which the said *Buller* likewise won from the Plaintiff: The Defendant *Redman* insists that he did dissuade the Plaintiff from playing after he had lost the said 50 *l.* and was unwilling to lend him any Money; yet the Plaintiff importun'd him, who after that gave a Bill under his Hand for the Payment thereof in few Days, and

yet

yet afterwards got the said Bill away from the Defendant, and that the same Money lent to the Plaintiff was Money paid by the said *Buller* unto the Plaintiff for a Debt due unto him from *Buller*. Yet it appearing, that the said several Sums so lent to the Plaintiff by the Defendant *Redman* was but the same Money which the said *Buller* had formerly so won of the Plaintiff, and lent divers Times over by the said *Redman* for the said *Buller*, and all gotten again by the said *Buller*; and it did not appear that the said *Buller* was really indebted to the said *Redman* in any Sum, nor that he did ever recover or had Satisfaction for the said 40 l. from *Redman*.

This Court was of Opinion that the said Monies were unduly gotten from the Plaintiff who can have no Remedy at Law for the same against *Buller*, he being beyond Seas: And this Court decreed a perpetual Injunction against *Redman's* Proceedings for the 40 l. and that the Plaintiff shall be discharged from the said Action for the 40 l. and of the said 40 l.

A perpetual Injunction against one that sued for Money unduly won at Dice.

proot 110.
Eq. Abr. 207. &c.

Dominus

Dominus *Arundel* contra *Arundel*,
10 Car. I. fo. 668.

A Witness examined for the Plaintiff, and was to be cross examined for the Defendant, but before he could be cross examined died, yet this Court ordered his Depositions to stand.

Caldwel contra *Wheat*, 10 Car. I. fo. 319,
328, 400.

THAT the Plaintiff became bound to one *Critchlow* in a Recognizance of 600 l. for the Payment of 300 l. upon which the said *Critchlow* took forth a *Levari Facias* directed to the Sheriff of *Middlesex* to Levy the said Debt upon the Lands and Goods of the said Plaintiff; whereupon the Sheriff return'd they had no Lands nor Goods, and after *Critchlow* died, and the Defendants being Executors without suing forth any *Scire Fac.* upon the said Judgment, took forth Execution directed to the Sheriffs of *London*, and the Plaintiff was taken in Execution in *London*, and is a Prisoner in the *Fleet* upon the same; therefore the said Execution being illegally gotten, and the Plaintiff wrongfully imprisoned,

Execution
by an Execu-
tor upon a
Judgment
recovered in
the Testators
Life time
without su-
ing a *Scire*
Fac.

It was prayed that a *Superfedeas* may be awarded to the Warden of the *Fleet* for the enlarging of the Plaintiff.

This Court referred it to the Judges for their Opinion, what in Case of this Nature, this Court may do in Law touching the granting of a *Superfedeas* to the Warden of the *Fleet* for enlarging the Plaintiff.

This Court granted a *Superfedeas* to the Warden of the *Fleet* to discharge the Prisoners

The Judges are of Opinion that the Execution taken forth by the Defendant against the Plaintiff upon the Recognizance doth appear to be erroneous by the Record, in regard no *Scire Fac.* has been taken forth by the Defendant; and therefore according to the Proceedings of other Courts of Justice a *Superfedeas* may be granted to discharge the said Execution, which according to the said Judges Opinion this Court granted accordingly for discharge of the said Execution.

Villa de Market Rinsen cont. *Brownlow*,
11 Car. I. fo. 482.

THAT a Decree upon the Statute of Charitable Uses being made for the Town of *Rinsen*, and the Defendant possessing some Part of the Lands which is liable to the Payment of the Money decreed. The Defendant insists to pay but his proportion of the Money, there being several

29. Ab. 90, 99.
1. Salk.

several other Persons that have Lands in their Occupations chargeable with the said Charitable Use, yet the Plaintiff lays the whole Decree upon the Defendants Lands.

Decree on charitable Uses to a Town. The Town may lay the whole Money upon one that is lyable to Payment and he shall have remedy to apportion each Parties Payment which are also lyable.

3. Feb. 320.

Alisbury contra Troughton, 11 Car. 1. fo. 23, 37, 46.

Discharged from Arrests being done as he came to put in his Answer.

29. Feb. 349, 350.

THE Defendant was arrested at the Plaintiffs Suit as he came about putting in his Answer, and imprisoned, and after several other Actions charged upon him, were all discharged, it being done in breach of the Priviledge of this Court.

Bidlake contra *Dominum Arundel*,
11. Car. 1. fo. 349.

*Paym^t of Purchase
money presumed*

THAT *Matthew Arundel* seized of the Rectory of *Lodisvel*, 10 *Eliz.* demised the same to *Philip Sture* Grandfather of the Plaintiff, and *Richard Sture* the Plaintiffs Father for their Lives, Remainder to *Grace Sture*, afterwards Wife to *William Newton*, for her Life, at the Rent of 14 *l. per Annum*, and 34 *Eliz.* for 100 *l.* the said *Arundel* absolutely sold all the said Premises to the said *Richard Sture* and his Heirs with a Warrant against him and his Heirs; and 31 *Jan.* 34 *Eliz.* the said *Arundel* entred into a Recognizance of 1000 *l.* for quiet Enjoyment; and afterwards *Rich. Sture* received the Rents and was the reputed Owner thereof, and the Inheritance descended to *Philip Sture* his Son, but the Freehold rested in the said *William Newton* in Right of *Grace* his Wife, and they entred and paid the Rent for divers Years to the said *Philip* until he died, and after his Death the Rent was paid to the Plaintiff till the said *Grace* died; upon whose Death the Defendant, the Lord *Arundel*, entred into the Premises on the pretence of an Enail on Sir *Matthew Arundel* and his Heirs Males by the Gift of Queen *Mary*, the
Rever-

*2 Vol. 44.
S.P. ib. 48.
part 108, 109. &c.*

Reversion remaining in the Crown, and thereby would avoid the said Conveyance, by which means the said Recognizance became forfeited, the said Rent of 14 *l.* not being paid since the Payment of 600 *l.* and Sir *Matthew Arundel* having sold divers Lands subject to the said Recognizance, made Leases in Trust to secure against the said Recognizance, and yet notwithstanding the said Intail the Defendant offers to pay what Money she can prove due to her, or can make appear was duly paid by the said *Richard Sturges* to the Defendants Father, as this Court shall adjudge, without insisting upon whether Assets descended to him from his Father or no; but to confirm the Plaintiffs Estate in the Premises, the Defendant refused, having made a Lease of the Premises for three Lives, and so it is not in his Power.

Payment of
Purchase
Money pre-
sumed after
40 Years.

1. Cha. C. 293

This Court declared the said 600 *l.* was paid above 40 Years since, and the same is exprest in the Indenture, and after so long Time it is not to be expected that precise Proof should be made of the Payment thereof, but it is to be presumed it was a good Payment. This Court farther declaring, that as this Case now stands this Court cannot order the said Premises to be settled with the Plaintiff, nor the Value thereof; neither can the Court go beyond

beyond the Penalty of the said Recognizance.

But this Court took Time to consider farther on the Case, and now again declared the Case to be very hard on the Plaintiff's Part; yet beyond the Penalty of the Recognizance this Court could not go, but wished the Plaintiff to take a competent Sum, which the Plaintiff consenting to, his Lordships Decree for a final end of this Cause, was that the Defendant should pay the Plaintiff 850*l.* in full discharge of the Recognizance, and of the Plaintiffs Claim to the Premises.

The Chancery cannot relieve beyond the Penalty of a Recognizance for performance of Covenants.

*1. Chanc. L. 228.
1. Palk. 154.
1. Vern. 403, 42, 330.
Show. J. C. 15.
Eq. Abr. 92.*

Feltham cont. *Davy*, 11 Car. 1. fo. 519.

THIS Court is of Opinion that the Plaintiff having made no Proof of the Agreement in question, that the Defendants Answer must be taken, and so dismiss the Bill.

Pope cont. *Day*, 11 Car. 1. fo. 38, 40.

THE Plaintiff lets the Defendant a Lease at 3*l.* per Annum Rent, and to enter upon default of Payment of the Rent in 20 Days; the Plaintiff gives a Bond for the Defendant's quiet enjoyment of the Premises, and performing of the Covenants; the Defendant fails in the

Bond of Covenants sued against the Lessor, the Lessor is relieved in Equity.

I

Payment

Payment of his Rent; the Plaintiff enters, and the Defendant sues the Bond and gets Judgment, and takes the Plaintiffs Surety in Execution, who pays the Defendant 21 l.

This Court ordered the Defendant to repay the said 21 l. to the Plaintiff.

Popham cont. Lancaster, 12 Car. 1. f. 477.

*Mar. 19. 25.
1. Roll. Abr. 373.*

TH E Defendants being Tenants of the Manor of *Newby* in the County of *Westmorland* held of the Plaintiff, complain that the Steward of the said Manor sets too high a Rate on their Lands and Tenements, and insists that their Fines ought to be assessed according to the ancient Rent after such proportion as had been used, as the Lord and Tenants could agree, and submits to this honourable Court for their Fines.

Chancery
Decrees a
moderate
Fine certain
between the
Lord and his
Tenant.

*ante 34. - 2. Vol.
134. &c.*

This Court finding there hath been a Variation of the Fines, so as the same were not certain, and upon perusal of Precedents by the Defendants produced, and especially the Case between *Middleton* and *Jackson*, 5 Car. 1. before mentioned, decreed, that an improved Years Value in a moderate Way shall be given and accepted from the Tenant to the Lord for a Fine.

Porter contra Emery, 12 Car. 1. fo. 475.

TH A T *Thomas Brett* 7 *Jac.* being seized in Fee-Tail of the Farm called *Phelow*, mortgaged the same to *Tho. Emery*, Father of the Defendant for 300 *l.* 9 *Feb.* 8 *Jac.* the said Premises being then in Lease to one *Sacked*; the said *Brett* granted the Premises to *Edward Emery* and his Heirs, Brother of the said *Thomas*, in Trust for the said *Thomas*, and the said *Brett* did thereby covenant at all Times then after, to make further Assurance unto the said *Edward Emery* his Heirs and Assigns, which Assurance was made with Intent that the said *Edward* should immediately after Re-convey the said Premises to the said *Brett* and his Heirs, upon Condition, that if the said *Brett* or his Heirs or Assigns should not pay the said 300 *l.* and Interest at the Time prefixed, then the said *Edward* might re-enter, and that the 10th of *Feb.* being the next Day after, the said *Edward* sealed a Re-conveyance unto the said *Brett* with a Covenant therein, That if the said *Brett* or his Heirs or Assigns did pay the said 300 *l.* and Interest, according to the said Condition, that then the said *Edward* should quit the Premises. And in *Easter* Term following *Brett* suffered a Recovery, and the said

Mortgage
by way of
Conveyance
and Re-con-
veyance.

H

Brett

Brett after the said Conveyances so made and Re-conveyed, received the Rents; and about 13 *Jac.* *Brett* died, and by Will bequeathed the Premises to the Plaintiff and his Heirs, and desired the said *Thomas Emery* to release the said Mortgage, the Plaintiff paying him what Money was due; and the said *Edward Emery* also died, and his Estate descended unto the said *Thomas Emery*, who also died, and the Defendant claimeth the Premises, as Son and Heir of the said *Thomas* his Father, (and purchased the Interest also of the Heir of the said *Brett*.)

Common
Recovery, to
what Uses
it shall ope-
rate.

Now the Question being how the Recovery suffered as aforesaid did work, whether only to the first Conveyance made to the said *Edward Emery*, or whether to the Conveyance and Re-conveyance made to *Tho. Brett*.

Who to have
the Benefit
of Redem-
ption.

This Court with the Assistance of the Judges, declared, That in Law and Equity the said Recovery did work and inure to the Uses in the said Re-conveyance, and that the Benefit of the said Redemption belonged to the Plaintiff, and decreed the same accordingly.

Hartwell contra Ford, 11 Car. 1. fo. 341.

Will repounded

THIS Case is touching a Term of Years of the Premises in Question, which the Plaintiff claimeth as Executor to *Charity Ford*; forasmuch as there ariseth a great Question upon the Will of *Lionel Ford*, Whether the Plaintiff as Executor to *Charity Ford*, who made her Will, and died at the Age of 18 Years, hath Right to the Premises by Virtue of the said Will? Or whether the same belongs to the Defendant *Locket*, who married *Mary*, the Heir of *William Ford* the Eldest, which said Defendant took Administration of the Goods of *William Ford* the younger Brother to the said *Charity*, unadministred? Or whether the same doth belong to the Sisters Children of the said *Lionel Ford*, or to some other? For that the said *Lionel* having given by his Will the said Lease and Profits, to the said *Charity* his Daughter for a Term in the said Will expressed, he gave the Residue and Remainder of the said Lease, after the said Term given to the said *Charity*, to his Son *William*, his Executors and Assigns.

Now the Words of the Will upon which the Question ariseth are these, *viz.*
And if it happen my Daughter Charity to die before that she shall have accomplished

the Tears of a lawful Age, then the whole Profits of the Premises to remain and be wholly to William my Son; and if my Son William die before the like lawful Age, then all the Profits of the said Premises to remain to Charity my Daughter surviving; and if the said Charity my Daughter, and William my Son die before the like lawful Age, as aforesaid, having no Issue of their Bodies lawfully hereafter to be begotten, then all the whole Term of the said Lease with the Profits, &c. I give and devise to all my Sisters Children, to be equally divided and distributed amongst them.

In a Will [if she happen to die before she shall have accomplished the Years of a lawful Age] how construed.

*post 250, 256, 257
2. Vol. 16, 105, 111,
117, 137, 140. &c.
3. Vol. 1, 93.*

Which said Will his Lordship and the Judges having considered of, and debated the Case, the Question arising in the Case, being, Whether the said Charity, who died at Eighteen Years of Age, was to be deemed of full Age, according to the Words of the Will, and Meaning of the Testator? His Lordship and the Judges are of Opinion, That a lawful Age in general Words (unless it be in a particular Case, as Guardian in Socage) must be construed and taken 21 Years; and therefore are all of Opinion, That the said remaining Term, according to the Construction of the Will, belongs neither to the Plaintiff nor Defendant, but to all the Sisters Children of the said *Lionel Ford*.

Aynsworth

Aynsworth contra Pollard, 11 Car. 1. f. 413.

THAT *Thomas Hall* deceased, having Executors in Trust.
only one Child the Plaintiff, made his Will, and three Executors in Trust, for the Use of the Defendant *Mary Pollard*, whom he intended to have married; and by his Will, after Debts and Legacies, gave the Residue of his Estate to his Executors, in Trust for the said *Mary Pollard*: That two of the Executors declared by their Answer, That the Trust was for the said *Mary Pollard*, but the third Executor declared, He conceived the Trust was for the Plaintiff, and that the said *Hall* declared no Trust in him for the said *Mary Pollard*.

That it being doubtful to which of them this Trust is, it was referred to a Judge, who certified,

That he conceives, That in Extremity there is no Trust proved according to the Will, but it appearing that the said *Mary Pollard* was a lewd Woman, and had abused the said *Hall*,

This Court, in respect the Trust was Trust not
not proved according to the Letter of the fully proved.
Will, think it not fit to relieve the said *Mary Pollard* on her Bill, for the Surplus of the said *Hall*'s Estate, this Court much disliking that the Estate of the said

Father by Will gives the Surplus of his Estate to Executors in Trust, for a Feme Convert, from his own Child. The Child relieved in Equity.

Hall should be given away from his own Child, to the said *Mary Pollard*, who hath and had an Husband living at the Time of the said Will, and dismissed *Pollard's* Bill.

This Court, with the said Judge, conceiving, that after Debts, Legacies, and Executors Charges paid, the Over-plus of the Estate should go and accrue to the Plaintiff *Aynsworth*, the said *Hall's* only Child, and decreed accordingly.

Baldwin contra Procter, &c. 12 Car. 1.
fo. 222.

Recognizance entred into, conditioned to pay Annuity vated.

post 206.

THE Plaintiff *Baldwin's* Suit is to be relieved against the Defendant upon a Statute of Recognizance of 2000 l. entred into by *John Colby*, the Defendant *Colby's* Father, deceased, unto Sir *Francis Baldwin*, deceased, conditioned to pay an Annuity of 140 l. per Annum, and another of 60 l. per Annum unto the said Sir *Francis Baldwin* and his Lady, during their Lives, which Recognizance the Plaintiff as Administrator of Sir *Francis Baldwin*, hath extended upon Lands, descended unto the said Defendant *Colby* for Arrears of Annuity, and also to have the Decree of this Court for Confirmation of the said Extent.

This Court would not relieve the Plaintiff,

Plaintiff, but dismissed the Bill ; and the Defendant *Colby's* Bill being to be relieved against the said Extent, and to have the said Statute or Recognizance and Defeazance to be delivered up to be cancelled.

It appearing to this Court, That the said Recognizance was entred into 7 *Jac.* for Payment of the Money out of the Lands which was sold by *Colby* the Father, for 3150*l.* and that Sir *Francis* and his Lady joined in a Fine with him in 12 *Jac.* and at the same Time *Colby* the Father purchased Lands in *Yorkshire* in the Name of the said Sir *Francis*, and the Interest thereof continued in him till within four Months of *John Colby* the Father's Death, to whom the said Sir *Francis* did then convey the same ; and in all Probability he would not have conveyed, if the Recognizance had not been discharged, or if the said *Yorkshire* Lands had continued in him as a Security for the Payment of the said Annuities ; and it did not now appear, that after *Colby* the Father's Death any Part of the said Annuities were paid to the said Sir *Francis*, or after Sir *Francis's* Death to his Lady, and Sir *Francis* never extended the said Statute in all that Time ; and though it appeared that the said Annuities were often demanded of the Relict of *Colby*

the Father, and she desired to be forborn, which the Plaintiff *Baldwin* insists was yielded unto, in respect the said Relict was Daughter in Law to the Lady *Baldwin*; yet it also appeared, that when the said *Torkshire* Lands were extended by a Statute Puisne to the Recognizance in Question, and the said *Mary* the Relict was instigated by the said Lady to set on Foot the Statute in Question, to save the Lands from the Puisne Extent; the said *Mary* the Relict refused, affirming the same was satisfied by her Husband; upon all which this Court was fully satisfied that the said Statute or Recognizance being so ancient, and no Payment proved of the Annuities since the said Re-assurance of the said *Torkshire* Lands, from *Sir Francis* to *Colby*, and the Recognizance in all this Time never set on Foot until now, by an Administrator *de bonis non*, and that the same was proffered to be delivered up for a small Sum, and for the rest of the Reasons as aforesaid, the same ought in all Equity to be discharged.

This Court decreed that the Plaintiff *Baldwin* do vacate the same.

Hales contra Hales, 12 Car. I. fo. 578.

THE Suit is to be relieved against an Ancient Mortgage, which hath slept 60 Years, the Plaintiff being a Purchaser of the Premises from Sir *Edward Moor*, who enjoyed the same about 57 Years: But the Defendant *Pett* hath set on foot an old sleeping Mortgage, pretending to be made by the said Sir *Edw. Moor*, to *John Pett*, Father of the Defendant *Thomas Pett*, and his Heirs, of the Premises in 20 *Eliz.* for Security of 800*l.* Now it appearing that the said *Pett*, Father of the Defendant *Thomas Pett*, died 40 Years since, and in all that Time there was never any Interest paid, or any Demand at all upon the said Mortgage until of late; and the Defendant had confessed as the Plaintiff did prove, that all the Mortgage Money was paid, and that about five Years since the Defendant offered for a small Matter to release his Claim in the Premises unto *Lettice Moor* the Heir general of the said *Sir Edward Moor*, and in respect the Plaintiff and those, whom he claims under, have enjoyed the Premises for 60 Years last past.

Relief against an old Mortgage, no demand being made nor Interest paid in 40 Years.

This Court decreed the Plaintiff and his Heirs shall hold the Premises in question against the Defendant, and all under him,

him and that a Vacat be entred upon the Inrolment of the said Mortgage.

Dennis contra Nourse, 12 Car. 1. fo. 475.

Statute entered into
37 Eliz. vacated.

ante 20, 102.

post-117.

A Statute entered into of 180 l. 37 Eliz. to the Defendant's Father for a Debt not yet satisfied; the Conifor held Lands of the Conifor divers Years and for other Reasons.

This Court is clear of Opinion, that the said Debt, if any ever were due upon the said Statute, was fully satisfied; and therefore and in regard of the said Statutes Antiquity, that a Vacat be made thereof and it discharged.

Injunct. to restrain

Waste &c.

post 200 242.

2. K. - 94.

Cole contra Peyson, 12 Car. 1. fo. 485.

THE Bill is to restrain the Defendants, who are Tenants for Life, from felling of Timber Trees and plowing ancient Meadow and Pasture Ground. The Defendants demurred for that in the Letter the Timber Trees are not excepted in particular Words, and crave the Judgment of the Court, if the Timber Trees do pass in the Grant as part of the said Feehold.

This Court in regard the Defendants have but an Estate for their Lives, and in respect the Defendants have cut go

Tim

Timber Trees, and cleaved them for Few-
l, granted the Injunction to continue
against felling of Timber, and plowing
ancient Pasture.

An Injunction
on against
Tenants for
Life to stop
them from
felling Tim-
ber and
plowing an-
cient Pasture.

Tryon contra Mitchel, 12 Car. 1. fo. 228.

THE Defendant entred into a Bond
to the Plaintiff, which the Defen-
ant insists is paid by perception of Pro-
fits of *Strelly Park* taken by Virtue of an
Extent for the King upon the said Bond.
Now appearing to the Court that after
the said Bond entred into and long before
the said Extent, the Defendant gave the
Plaintiff a Judgment for his said Debt:
Therefore this Court now declared that
by point of Law the said Extent was
void, because the Bond did *transfire in rem*
licatam. And yet nevertheless, if the said
Defendant would have proved that any
profits had been taken by the said Ex-
tent; this Court would have relieved the
Defendant for the same; but failing of
such Proof, this Court ordered the De-
fendant to pay the 100 l. on the said Bond
with Damages.

Extent void.

Profits taken
upon a void
Extent, to be
relieved.

Smith

Smith contra Smith, 12 Car. 1. fo. 99.

29. Apr. 80
122. Vc 7 Chancery
will help a
Defect in a
Surrender.

THIS Court declared that they would help a Defect in a Surrender.

Hayn contra Nelson, 12 Car. 1. fo. 220.

Interest for
Orphanage
Money.

2. ante 26.

THE Defendant for any Monies which he hath put out belonging to the Plaintiff as her Orphanage Money, shall account and pay Interest after such rate as is allowed for Orphanage Money by the Court of Orphans, and no more.

Southcot contra Southcot, 12 Car. 1. fo. 198.

THAT *Thomas Southcot*, the Plaintiff's Grandfather being seized of Lands, and marrying *Thomazin*, the Cousin and Heir of *Sir Peter Carew*, who upon that Marriage did convey the Premises, after his and his Ladies Death, to the Use of the said *Tho. Southcot* and his Heirs; and having by her Three Sons *George*, the Plaintiff's Father, *Thomas* and *Peter*, and the said *Thomazin* died, after whose Death, *Thomas*, the Plaintiff's Grandfather, married *Eliz. Fitz Williams* by whom he had seven Sons whereof the Defendant was one; after which *Thomas*

he Grandfather, for Provision for his
 younger Children granted the Annuity
 in question unto the Defendant being
 his second Son by the second *Venter*, af-
 ter which *Tho.* the Grandfather, settled
 all the Premises aforesaid (except the
 Manor of *Moon-Sattery*) on the Defen-
 dant; and the other Sons by the said
Eliz. to the Disherison of the Plaintiffs
 Father, who was the Eldest Son of the
 said *Thomas*, who conveyed the said *Moon-*
Sattery, charged with 300 *l. per Ann.* to the
 said *Eliz.* unto the Defendant *George*,
 and after the Death of *Thomas*, the Grand-
 father, finding himself grieved by the
 Disherison, commenced Suit in the Court
 of Wards, which was referred and settled,
 Releases were sealed on both Sides, and
 there was no mention of the said Annui-
 ty; and it was not intended by *Thomas*,
 the Grandfather, that he should have any
 benefit of the said Annuity, when he had
 conveyed all or the greatest Part of his
 Lands away from the Plaintiff's Father to
 him, and the same having so rested and
 never questioned in all this Time from
 3 *Eliz.* till now of late; and the Point
 of the Annuity is in reference from his
 Majesty to Four of the Lords of the
 Council; wherefore and for that the said
 Deed of Annuity is an old sleeping Deed
 newly started up after 40 Years; there
 is

Injunction
to stay Suit
on an old
Deed of An-
nuity which
was newly
started up af-
ter 40 Years
sleeping.

is no Cause to compel the Plaintiff to
bring in the said Annuity and granted an
Injunction for the staying of the Suit at
Law for the said Annuity.

*Lake contra Philips & Lake, 12 Car. 1.
fo. 418.*

2. V. 44, 45

Trust

*and 4, 9, 13, 51,
101. 5c?*

Proof con-
trary to an
express Deed
of Trust not
allowed.

LAnds are by Deed of Trust expressly
mentioned to be conveyed to the
Plaintiff, but the Defendant produced
Proofs that it was intended the Plaintiff
should not have Power to alienate, which
this Court would not regard in respect
that the Proof was contrary to the said
Deed of Trust, and that it carried no
Probability, the Feoffees being enjoined
by the said Deed to convey to the Plain-
tiff, which goeth beyond all Testimony,
and decreed the Premises to be conveyed
to the Plaintiff.

29. Ab. 7 D. c. 1.

Med. 29. 33. C. D. 84?

*Bracken contra Bently, 12 Car. 1.
fo. 388.*

Goods and a Library to the Defen-
dant for Life, and after to the
Defendant's Daughter and her Heirs for-
ever, the Plaintiff married the Daughter
who is since dead, so as the Plaintiff
Administrator seeks to compel the Defen-
dant to give Security to deliver the Good

Reports in Chancery.

III

to the Plaintiff after the Defendants Death,
or the Value thereof.

This Court decreed the same accordingly,
and a Commission is awarded to the
Master to examine upon Oath such Wit-
nesses as shall be produced before him.

Ireland cont. Payn, 13 Car. 1. fo. 21.

THAT *Eliz. Godden* being possessed
of a Lease of 100 Years by her Deed
dated 7 Aug. 2 Car. 1. in consideration of
a Marriage between *John Ireland*, the
Plaintiffs Father, and *Joan Godden*, Daugh-
ter of the said *Eliz.* did assign all her re-
maining Term in the Premises to *Thomas*
Ireland, the Plaintiffs Guardian, and *Wal-*
ter Noble in Trust (*viz.*) the one Moiety
of the said Premises to the Use of the said
Eliz. Godden for so many Years of the
Term as she should live, and the other
Moiety to the Use of *John Ireland* and
Joan Godden for so many Years of the
Term as the said *Eliz. Godden* should
live, and after the Decease of the said
Eliz. the whole Premises to come to *John*
Ireland and *Joan Godden*, and to the Chil-
dren of their Bodies to be begotten, for
all the residue of the said Term of 100
Years, and that shortly after the sealing
of the said last Deed, *John Ireland* and
Joan Godden intermarried, and had Issue

Reversion of
Goods after
a Life given
to *J. S.* the
Possessor for
Life decreed
to give Secu-
rity, to
deliver the
Goods, or va-
lue after her
Death.

*post 130,
260. 2. V.
66.*

Remainder
of a Term
limited to
Baron and
Feme, and
to the Chil-
dren of their
Bodies toge-
ther, it is no
Entail in
Law.

Vol. 2. 16. 66.

the Plaintiff, and that the said *John Ireland* afterward died, and the Defendant afterwards intermarried with the Defendant *Pain*, and afterwards died, having no other Issue than the Plaintiff, who ought to enjoy the said Lease for the remaining Term. This Court upon consideration of the Assignment and the Uses therein, and with the Assistance of the Judges did now declare, that they were all of Opinion, that there was no Entail, in Law of the said Lease, neither had the Plaintiff any joynt Estate with her Mother therein, and so dismiss the Plaintiffs Bill.

Deed of Revocat.ⁿ Robsart contra Turton, 13 Car. 1.
not pursuing y.^e power fo. 94, 195, 247, 357.

2. post. 153, 154. **T**HE Plaintiffs seek Relief for Portions given them by the Will of *Arthur Robsart*. This Court, before they would make any Decree, directed that the Validity of the Revocation of the Deed of 15 *Eliz.* should be tryed whether a Revocation or not, which on a special Verdict was found no Revocation. But the Defendant produced a Deed of 24 *Eliz.* made by the said *Arthur Robsart* but without any Seal thereunto, purporting a Covenant for him and his Heirs to stand seized after his Death of a Moiety

of the Premises to the Use of the said *Dorothy*, his Son's Wife for her Life, and supposed to be made before his Revocation, which Deed of 24 *Eliz.* was to be produced to the Plaintiff, who having seen it, insisted it worked no Alteration in the Case as to the Point of Revocation.

This Court thereupon referred the Consideration of the said Deed to Three Judges, and that if they certified that the said Deed made no Alteration as to the said Revocation, then no Trial should be had on that Deed.

The said Judges certified, that *Arthur Robsart* by the Deed of the 15th *Eliz.* did limit to himself but an Estate for Life, with a Remainder to *Robert Robsart* the Son in Tail, with divers Remainders over; but by the Proviso left to himself a Power to alter the Estates then settled, if he should afterwards grant any Estate in Fee-Simple or Fee-Tail of those Lands, or any Part thereof; and that afterwards, according to his Power, the said *Arthur* conveyed an Estate in Fee-Simple by making a Lease and Grant of the Reversion in Fee, under which the Plaintiff claims, which was the Case already adjudged upon a special Verdict, before which Time this Deed of 24 *Eliz.* was made by the said *Arthur*, and not men-

What amounts to a Revocation of a Deed according to Power, or not.

A Deed not pursuant to the Power of Revocation.

2-*not* 153,
1-*Ch. C.* 105.
2-*not* 71-34.33.
to 30.

tioned in the former Suit; but the said Judges were of Opinion, That the said Deed 24 *Eliz.* intervening, makes no Alteration of the Case to interrupt the Power of Revocation, for that it is but a Covenant of *Arthur's* for him and his Heirs to stand seized of one Moiety of the Lands, to the Use of the Wife of the said *Robert* for her Life for her Jointure, and meddles not at all with the Estate of Inheritance then in Fee-Simple or Fee-Tail; and so being not pursuant to the Power, is of no Force to that Purpose which the Defendant would extend it to make an Interruption of the Power of Revocation.

This Court decreed Two Parts of the said Three Parts to the Plaintiff according to the Judges Certificate.

Wroughton contra Hubbart, 13 *Car. 1.*
fo. 219.

THAT Sir *Giles Wroughton* the Plaintiff being seized of the Manor of *Broodlinton*, sold the same to *Glanvil* for 8000 *l.* which 8000 *l.* was to be disposed of, (*viz.*) 2000 *l.* to pay Sir *Giles's* Debts, 3000 *l.* put to Interest for the Benefit of Sir *Giles* and his Lady, during their Lives, to secure 240 *l.* per *Annum* to them for their Lives, and 500 *l.* apiece to be paid to the Plaintiffs, *Katherine*

Katherine and *Gresham* at their Marriage, and the 240 *l. per Annum* to abate for so much as the Interest of the Portions came to from the Time of Payment; and the other 3000 *l.* to be at the Disposition of the said *Mr. Wroughton* the Testator, and the Sum of 3000 *l.* apiece was accordingly paid to the said *Mr. Thomas Wroughton*; and it was agreed, that if the said *Sir Giles* and his Lady die before the Plaintiffs *Katherine* and *Gresham* were married, then they to have 40 *l. per Annum* for Maintenance apiece until their Marriage, and then the 500 *l.* apiece to be paid them, and the Lady *Wroughton* is since dead, and the said *Tho. Wroughton* in March 12 Car. 1. made his Will, and gave the Plaintiffs *Katherine* and *Gresham* 500 *l.* apiece, and made the Defendant Executor, and died; and ever since the Sale and Agreement aforesaid, *Sir Giles* received the 240 *l. per Annum* for the Interest of the 3000 *l.* and since *Mr. Wroughton's* Death for one half, until June last the Defendant hath refused to pay the same, under Pretence of the Testator's Debts and Want of Assets; and therefore the Plaintiffs for the 240 *l. per Annum* secured by the 3000 *l.* the Security being in the said *Thomas Wroughton's* Name, and to have the 500 *l.* apiece, have exhibited their Bill.

The Defendants insist, that the Testator died greatly indebted to several by Statutes and other Specialties, and the Testator's Estate besides this 3000 *l* will not satisfy his Debts, and the Creditors have a Suit depending against the Defendant for their Debts; and *Mary* and *Elizabeth*. two of the Testator's Children, have a Bill in this Court for 400 *l*. which they claim out of the Testator's Estate as Money given them by Mrs. *Brown* their Mother's Aunt.

Now the main Point insisted on by the Plaintiff was, that according to the original Agreement touching the 3000 *l*. to be put out at Interest for Sir *Giles* and his Lady, ought to remain intire, and not to be touch'd or impeached by any of the Creditors.

Fermier contra Maund, 13 Car. 1, fo. 339

Ancient Pasture not to be plowed, though it may have been formerly plowed.

THIS Court would not give way to the plowing up of ancient Pasture, though it was insisted on, that the Nature of the Ground was for Tillage, and had been formerly plowed.

Domina

Domina *Hatton* contra *Jay*, 13 Car. 1.
fo. 306.

THAT in regard of the Antiquity of the Statute of 500*l.* wherein the Lord *Cromwel* was bound to *John Jay* the Defendant's Father, was set on Foot by the said Defendant, as Administrator to his said Father, 40 Years after the entering therein all Proceedings were stayed till Cause shewn.

The Defendant insists, that the Defendant's Father forbore Prosecution, for that Sir *Edward Cook*, who purchased divers of the Lands liable thereto, did from Time to Time promise to satisfy the said Debt, and the Defendant since his Father's Death, which is 18 Years since, hath often demanded of Sir *Edward Cook* the said Debt which he promised to discharge, but failing, the Defendant ten Years since, gave the Statute to an Attorney to take out Execution thereon, and till about two Years past could not get the same out of his Hands; and it appearing by Letters from the Lord *Cromwel* all dated in the same Month the Statute bears Date, that he importuned the Defendant's Father to lend the Money on the Statute,

An ancient Statute after 40 Years set on Foot, and why.

ante 106.

This Court ordered the Plaintiffs to bring their Bill to stay Proceedings on the Statute.

Palmer contra Keynell, 13 Car. 1. fo. 643.

2-2 Nov. 428
540. - ant 17.
13-90. - lib. 1. 232

Bond given before Marriage that the Wife should dispose of 500 l. which she did, and decreed accordingly, notwithstanding the Bond was cancelled by Consent of the Wife; and the Husband gave a Note that she should dispose of it, if he were acquainted with it.

THE Case is, That before Marriage between the Defendant and *Agnes*, his late Wife, Grandmother of the Plaintiffs, the Defendant agreed that the said *Agnes* should after Marriage, by Will or otherwise dispose of 500 l. and for Performance the Defendant gave a Bond for 1000 l. that the said *Agnes* before her Death appointed the said 500 l. to be disposed amongst the Plaintiffs her Grandchildren; but the said Defendant procured his said Wife *Agnes* to consent, that the said Bond should be cancelled; to be relieved notwithstanding was the Plaintiffs Suit. And a Decree was pronounced, that the said 500 l. should be divided according to the said Agreement of *Agnes* with Interest, which Decree was allowed by the Master of the Rolls; but the Lord Keeper refused to sign the same upon some Point in Law then seeming doubtful to his Lordship; which Point being now debated, which at the first Hearing was not insisted on, the Substance thereof being, That upon releasing the said Bond, the said Defendant did sign a Note in Writing, That notwithstanding the said Bond was released, yet the said Defendant would permit and suffer his said Wife to dispose of the said 500 l. so as he might first be

ac.

acquainted therewith, which Note the Defendant would avoid upon these Words, (*viz.*) *So as he might be first made acquainted with it*, which the Defendant supposes do tie his Agreement to a Condition.

But this Court, upon reading the said Note, is satisfied that the same ought not to receive that Construction, but to be binding to the Defendant, and confirmed the first Decree.

Mills cont. Mills, 13 Car. I. f. 409, 606.

THIS Case is touching two Leases, one of 60, and the other of 1000 Years of Lands purchased by *Roger Mills*, Father of the Defendant *Roger Mills*, in the Name of *John Mills*, and the Defendant *Roger* his Sons, which the said *Roger* claims by Survivorship (*John* being dead) the Inheritance thereof being in the said *Roger*, and after descended and came to *John*.

That by the Order f. 409. it appears that *Roger Mills* the Plaintiff's *Eliz. Mills* Grandfather (she being Daughter of *Jo. Mills* eldest Son of the said *Roger*) having Issue two Sons as aforesaid, (*viz.*) *John* his eldest, and *Roger* his youngest, convey'd the Lands to *John* his eldest Son, and the Heirs Males of his Body, and for want of such Issue to the Heirs Females of the said *John*.

No Power
of Redem-
ption.

Lease to at-
tend the In-
heritance.

ante 30, 96.

This Court, as touching the two Leases of 60 and 1000 Years, upon reading the Deed of Uses, is of Opinion, and declared that the Defendant *Roger* the Son, had no Power to redeem the Lands, settled on the Heirs Females of the said *John*, by Payment of the 500 *l.* in the Proviso of the said Deed of Uses mentioned, he having neither Wife nor Son; and if he had such Power, yet the Non-payment of the 500 *l.* within the Time limited, he having Notice thereof, made the Estate of the Heir Female absolute, and therefore the said Lease ought to wait on the Inheritance, and decreed accordingly.

Morgan contra Seymour, 13 Car. 1.
fo. 438.

ante 34, 35.
post 150, 151.

THE Plaintiff with Sir *Edward Seymour* the Defendant being bound with Sir *William St. Johns* for the proper Debt of the said *St. Johns*, to the Defendant *Rowland* in a Bond of 200 *l.* for the Payment of 100 *l.* and the said *Rowland* sued the Plaintiff only on the said Bond, the Plaintiff seeks to have the said *Seymour* contribute and pay his Part of the said Debt and Damages, the said *St. Johns* being insolvent.

This Court was of Opinion, that the said *Seymour* ought to contribute and pay

pay one Moiety to the said *Rowland*, and decreed *Rowland* to assign over the said Bond to the Plaintiff, and *Seymour* to help themselves against the said *St. Johns* for the said Debt.

One Surety forced the other Surety to contribute to the Payment of the Money, and the Bond assigned over.

Norwood cont. *Norwood*, 13 Car. 1. f. 560.

THE Plaintiffs Bill is for 400 l. Portion left her, to be paid to her at the Age of 21 Years, or Day of Marriage, so as she married with the Assent of the Trustees and her Mother and eldest Brother.

Marriage Portion to be paid so as she married with Assent.

see next Case
J. Gibb. Rep. 2687.

The Defendant insists that the Plaintiff is about marrying without the Assent aforesaid, and refuses Payment of the said Portion, and offered divers Reasons against the payment.

This Court declared it just and reasonable, that the said 400 l. with Damages should be paid to the Defendant.

Vintner cont. *Pix*, 13 Car. 1. fo. 443, 505.

THAT *Rich. Pix* by Will, of which he made the Defendant his Executor, gives to his two Daughters *Elinor* and *Alice* 200 l. apiece to be paid at their Ages of 21 Years, or Days of Marriage, and the Testator gave the said *Elinor* and *Alice* 200 l. more by a Marginal Note in

post 133. Vol. 94.
ante 284.
11th Dec. 11
see case 2 Vol. 95.

in his Will, with this Clause (*if they behave themselves dutifully unto their Mother*) and the said *Alice* died, and the said *Elinor* is her Administratrix, and *Elinor* marries the Plaintiff without consent or liking of the said Defendant her Mother.

200 l. given in the Marginal Note of a Will to a Daughter (if she behave her self dutifully to her Mother) she marries without her consent, yet the 200 l. decreed to her.

This Court declared that the 200 l. positively given by the said Will, the Defendant ought to pay the same to the Plaintiff; but as touching the 200 l. given to the said *Elinor* and *Alice* by the Marginal Note in the Will upon their dutiful Behaviour to the Defendant, she having married her self without the Consent of her Mother as aforesaid, referred that Point to the Judges.

The Judges certified that the 200 l. in the Marginal Note mentioned, as well as the 200 l. in the Body of the Will, do belong to the Plaintiff *Elinor*, her Marriage notwithstanding, and that the first Letters of Administration of the Estate of *Alice* sued out by the Plaintiff, Administratrix of *Alice*, are yet in force; the Letters of Administration granted to the Defendant being subsequent to the Plaintiffs Letters of Administration.

Subsequent Letters of Administration.

Marston

Marston contra Marston, 14 Car. I.
fo. 676, 725.

THE Plaintiff as Heir in Tail makes Title to Lands, and the Defendant makes Title for her Life for her Joynture by Deed and Fine, which Fine is mistaken, for that the Lands do lie in two Parishes within the City of *Coventry*, viz. Part in *Trinity* Parish, and the other Parcel in *St. Michaels* Parish, and that the Fine is only of the Lands in *Trinity* Parish; but it not appearing that any of the Lands in the Deed of Joynture and Fine, which did both agree in Names and Quantities, do lie out of the said *Trinity* Parish, nor any Thing else appearing to invalidate the said Jointure.

Fine mistaken the Land lying in two Parishes.

ante 51, 65.

His Lordship dismiss the Bill, and confirmed the Master of the Rolls and the Judges Order.

Maundy cont. Maundy, 14 Car. I. f. 1247.

Will inofficious
2. ante 25.

THE Question in this Case being touching the Validity of the Will of *Thomas Maundy*, late Husband to the Defendant *Joan*, by which Will the Lands of the said *Thomas* are settled on the said *Joan* and her Issue, out of the Name and Blood of the said *Thomas* her Husband, which

which Will the Plaintiff insists was contrived by the Defendant *Joan* contrary to the intent of the Testator, and against certain Notes written by him in his Life Time, whereby he had settled the Inheritance of the said Lands on the Plaintiff and his Heirs after the Death of the said *Joan*; and the Plaintiff proves that the Testator intended to prefer him being of his Name and Blood, and drew Notes for his Will, whereby he gave the Lands to *Joan* for Life, and after to the Plaintiff and his Heirs; but the Testator left the perfecting of his Will to the Defendant *Ayleworth* an Attorney, who prevailed with the Testator to let the Will be as he should pen it.

An inofficious Will seeking to prefer Strangers before Name and Blood.

This Court (it appearing the said *Joan* declaring to several that she had the Lands but for Life, and this Court conceiving the Testator to be but weak in regard he left it to the Discretion of the said Attorney) declared, and is of Opinion that the said Will was a very inofficious Will seeking to prefer Strangers before Name and Blood.

Harrison

Harrison cont. *Lucas*, 15 Car. 1. fo. 236.

TH E Statute of Limitations pleaded and over-ruled, and this Court with the Judges, were of Opinion that the Plaintiff had no Remedy at Law, but made a Decree for the Plaintiff.

Plea of the Statute of Limitations overruled.

ante 76. p. 14.

Gorge cont. *Chansey*, 15 Car. 1. fo. 227.

S. C. 161. S. C. cited 1. Cha. 1. 112.

Trust ante 9.

TH E Bill sets forth, that whereas the Lady *Dorcas Chansey*, Grandmother to the Plaintiff, being possessed of the Sum of 200 l. in Oct. 1631, delivered the said 200 l. to one *Gibs* on Trust to be put out at Interest, to the end she may receive the Interest for her Life, and after the same to remain to the Plaintiff's Use, and the Principal to be to the Plaintiff's Use for ever, which was put out accordingly in the Name of *Toby Chansey*, the Defendant aforesaid, for the purpose aforesaid, and the Bonds were delivered to the said *Toby Chansey*, who received the Interest during his Life; and about a Month before her Death, she gave the said Bonds, and Monies due by the same, to the Plaintiff according to her former Declaration; and the said *Toby Chansey* being only trusted as aforesaid, but minded to gain the said Money for himself released

Trustee released the Bonds put out in his Name.

*1. Cha. C. 46, 47,
8. 107.*

released the said Bonds; and the said Lady *Chansey* being dead, the Defendant *Toby* refuseth to pay the said Money and Interest to the Plaintiff, and insists that Sir *William Chansey*, his Father, did by Deed in 1634, give Power to the said Lady *Dorcas Chansey*, his Wife, to dispose of all her Estate, which she had then in Possession, or at any Time should be possess of, unto him this Defendant *Toby Chansey*, and not otherwise; and thereupon the said Lady continued them in the Defendants Name till her Death. That in 1635, the said *Gibs* caused the said Lady *Chansey* to make her Will, whereby she gave her Estate to the Plaintiffs Mother, and made her Executrix, but afterwards revoked that Will, and gave her Estate to the said *Toby Chansey*.

And the Defendant insisting, that there being a separation between the said Lady and Her Husband Sir *William Chansey*, the said Sir *William* agreed to allow her 170*l.* per Ann. as Alimony for her Maintenance, and that she did save and get the said 200*l.* in question out of the said Alimony, and being a Feme Covert had now Power to dispose thereof by Will or otherwise at her Death without the Assent of her Husband, having authorised her to dispose thereof by Will to the Defendant *Toby* her Son; but forasmuch as she had

by her Will taken upon her to dispose the same otherwise, such Gift and Will ought by Law to be void.

This Court was clear of Opinion, and so declared, that for Things in Action or upon a Trust, a Feme Covert might by Will dispose of the same without the Assent of her Husband; and therefore, and in regard it appeared that the said Lady did declare that the said 200 l. should be and go after her decease to the Use and Benefit, and towards the Benefit, and for a Portion for the said Plaintiff her Grandchild, and that the same for that purpose was put forth in the Defendant *Toby's* Name in Trust.

Feme Covert by Will disposing a Thing in Action or upon a Trust without the Assent of her Husband.

Eq. Abr. 44. 45. 46. 1. Cha. C. 170.

This Court was fully satisfied, that the said 200 l. with Damages and Costs ought to go and be paid to the Plaintiff, according to the Declaration of the said Lady.

Isham contra Cole, 15 Car. 1. fo. 329.

THAT *Edward Hill* for 130 l. surrendered Lands to the Use of the said *Edward Hill* and his Wife for their Lives, Remainder to the Plaintiff and her Heirs and Assigns for ever, to which the Defendants do intitle themselves and detain the same from the Plaintiff.

The Defendants insist, that the said *Ed. Hill* for 207 l. in *July 3 Jac.* demised the Premises

Chancery
will not re-
lieve Mort-
gages after a
long elapse
of Time, tho'
the Mortga-
gee confes-
seth he was
satisfied, as
was proved
by one Wit-
ness.

Premises to one *Will. Sparry* for 99 Years, and *Sparry* 15 *Jac.* for valuable Considerations granted the same to *John Sparry*, and he in 3 *Car.* 1. assigned the same to *Anthony Cole* the Defendant; and the said Defendant *Cole* confesses, that in the Deed from *Hill* to *Will. Sparry*, there is a Proviso of Redemption; and although it appeared by Articles, that there was a good Consideration of Money besides Natural Affection which induced the said *Edw. Hill* to surrender the Premises to the Plaintiffs Use; and it being proved by one Witness that the said *Will. Sparry* about 24 Years since told him he was fully satisfied, and paid all his Debts due from the said *Edw. Hill*, which moved the Court to conceive that the Plaintiff had good Cause of Relief. Yet in regard it is 33 Years since the Mortgage from *Hill* to the said *William Sparry*. This Court doth hold it a dangerous Precedent to relieve Mortgages after so long an elapse of Time; but this Court proposed in respect of the Badges of Equiry, which this Cause beareth on the Plaintiffs Part, to do something for the Plaintiff, which the Defendant consented to do.

Wyard contra Worfe, 15 Car. 1. fo. 328.

THAT *Eliz. Wyard* the Plaintiff's Mother lent one *Wellington* 200 l. for Security whereof with Interest, made to several Trustees an Annuity of 20 l. per Annum out of Lands, for the Use of the said *Eliz.* provided that if the said *Wellington* at any Time re-paid the said 200 l. then the Annuity to cease; which Rent was paid to the said *Eliz.* accordingly, who afterwards by her Will bequeathed the said Annuity to the Plaintiff and the Heirs of his Body, with Remainders over subject to the said Proviso, and made the Defendant Executor, who many Years received the said Annuity, and paid the same to the Plaintiff. But the said *Wellington* being dead, his Son and Heir paid the said 200 l. to the Defendant, and discharged the said Annuity, and since the Defendant hath paid the Interest of the 200 l. to the Plaintiff, but refuseth to pay the 20 l. to the Plaintiff, lest he might be afterwards questioned for the same after the Plaintiff's Decease, by the Heirs of the Plaintiff's Body, or by those in Remainder, if the Plaintiff should die without Issue; whereas in case the said Annuity had not been redeemed, the same had been only at the

200 l. secured by an Annuity, by Way of Mortgage. Mortgagee entails the Annuity, remainder over by Will, and dies, Mortgagor pays the 200 l. to the Executor. The Executor shall pay the 200 l. to the Devisee, and not keep it, and pay the Interest as the Annuity was limited.

K

Plain-

Money cannot be entailed.

2. Vol. 410. contra

Plaintiff's dispose, and so ought now the 200 l. which cannot be entailed by the Laws of this Realm, which this Court referring to a Master who certified the Truth to be as aforesaid; This Court decreed the 200 l. to be paid to the Plaintiff, and for Payment thereof this Court doth discharge the Defendant.

Naylor contra Baldwin, 15 Car. 1. fo. 430.

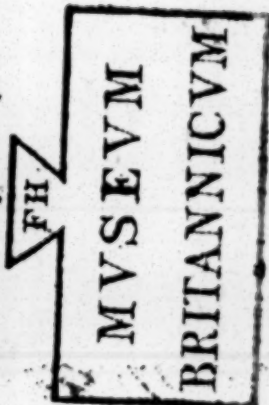
Bill to relieve Creditors.

Voluntary Conveyance.

post 162, 173, 277.
ante 37.

THE several Points insisted on in this Cause are, *viz.* That *Richard Baldwin* the Defendant being seized in Fee of several Lands and Tenements, in July 1630. made a voluntary Conveyance, whereby he sold the Premises to *Abraham Hays* and his Heirs in Trust to the Use of his Son *Thomas Baldwin*, Remainder to another Son *Richard*, Remainder to *Katherine* his Daughter and her Heirs for ever, with a Proviso that the yearly Rents and Profits of the Premises should be paid to *Anne* his Wife, for the Maintenance of his Children, and the raising of their Portions, and after a full third Part to be for a Joynture for his said Wife; after which Deed made, and before Enrolment thereof, a Lease of the said Premises was made by *Richard Baldwin* to the Defendant *Tirril*, for the securing 400 l. lent by *Tirril*

il to the said *Baldwin*, with a Clause of Redemption at the End of three Years ; and to confirm the said Lease, *Baldwin* and his Wife acknowledged a Fine to the said *Tirril* ; and the said *Hays* afterwards conveyed the Premises to *Rothwel* and his Heirs, another Defendant, subject to the said Trust. And *Baldwin* in August 7 Car. 1. became indebted to the Plaintiff *Naylor* in 240 l. Bond for Wares, which he sued to Judgment : And the said *Baldwin*, 7 Car. 1. was indebted to the Plaintiff *Noell* in a Recognizance of 240 l. for Plate and Jewels ; and to the Plaintiff *Bourne* in 100 l. on Bond, which is sued to Judgment. That conceiving *Baldwin* had good Power to let Leases, and that he was seized in Fee of the Premises, 7 Car. 1. let a Parcel of the Premises to one *Goodwin*, for the Consideration of 40 l. for 41 Years, at 40 s. per Annum Rent to build, and the Defendant *Parsons* taking the Lease to be good, bought the same of *Goodwin* for 69 l. and now finding his Lease to be insufficient, dares not go on with his Building ; and both the Sons being dead, and the Daughter of *Baldwin* married to the Defendant *Higgins Baldwin*, they received the Rents, so the Creditors not being satisfied their Money, have exhibited their Bill for Relief.



The Plaintiff insists, that the said Deed of Settlement is fraudulent, and made to deceive Creditors.

Fraudulent
Deed to de-
ceive Credi-
tors, set a-
side.

2. Vol. 266, 200.
post 140. 1. Ch. C.
202, 293.

Creditor for
Wares over-
sold, not fa-
voured.

Fine levied
by Feme-co-
vert to con-
firm a Lease,
no Bar of her
Thirds after
the Lease sa-
tisfied by the
Profits.

ante 36 post 254

This Court ordered the said Deed to be set aside, and that *Tirril* shall not stand upon the Forfeiture of his Lease, otherwise than to help him to his just Debt and Damages, together with the 39 *l* 10 *s*. which was also lent upon Security of that Lease, provided it appear upon taking an Account, that the same was agreed to be secured by the said Lease, otherwise this Court will not give way to the hedging in of other Debts. And as for the Debts due by Wares which were put upon the said Defendant *Baldwin*, and of which he could not make half the Money: This Court not favouring Contracts of that kind, ordered the Master to make Allowance as he saw Cause; and as for Mrs. *Baldwin*'s Dower, unless she have barr'd her self totally by levying the Fine, this Court makes no Order therein at present, but declared, That if she levied the Fine only to secure the Lease, no Debt could bar her, except *Tirril*'s Debt on the Lease; and this Court ordered the Lease to stand good.

Vintner contra Pix, 15 Car. I. fo. 18, 219.

TH E Defendant, an Executor, having paid a Legatee her Portion of 400 l. the Master in his Report thinks it against Law, that an Executor should pay some Legacies, and leave the rest of the Legatees unpaid, but every one should lose in Proportion.

The Defendant Executor insists, that the Legacies were not all due at one Time, but some sooner, and some later, as the Children were in Age one before the other; and the eldest Daughter had a Preferment offered her, and so no Reason that she should lose the Occasion for Want of her Portion, which this Executor by the Will was constrained to pay her.

This Court would be satisfied what the Law is, when several Legacies are given, the first being due, and the rest not till in Time after, whether the Executor may pay the first, if there be not Assets to pay the rest? This Court referred this Matter to the Judges of the Prerogative Court.

The Judges certified, and were of Opinion, That by Law the Executor may not pay the first the whole Legacy, if there be not Assets sufficient to pay the rest.

*1. Ch. C. 136, 240.
2. Ch. C. 9, 132.
post 136, 2. Kent.
260. Vern. 94.*

Several Legacies, the first is due, and the other is not due till afterward, the Executor may not pay the whole Legacy to the first, if there be not Assets to pay the rest.

Each Legatee
to have a
rateable
Share.

Proviso for
supplying the
Legacies out
of the real
Estate, if the
personal E-
state is not
sufficient.

This Court reading the Will and the Proviso in it for supplying of the Legacies out of the Real Estate, if the Personal will not suffice, doth conceive it equitable and just, that the Executor ought to have carved equally, and given each one his rateable Part. And therefore it must lie upon the Executor to make the rest of the Legacies good in a proportionable Way, and the Executors and Legatees to make themselves whole out of the Real Estate, the Proviso appointing it.

In regard the Legacies are to be made up out of the growing Receipts, and not upon and out of a plentiful Estate; and that the Executor by his forwardness in paying Legacies, must now bear it out of his own Purse; this Court sees no Cause to allow the Legatees Damages for the same.

Magdalen College Oxon contra Crook,
15 Car. I. fo. 229.

SIR *Simon Bennet* devised all the Coppices and Wood-Grounds, and all and singular the Premises, and all Woods and Under-woods (except Timber-Trees) to his Wife for Life, and after her Death limited the same with the Timber-Trees to Trustees, that they for two Years should

should pay the Profits of the Premises to the Plaintiff, and they to bestow the same in building the College, and after limited the Reversion and Fee-Simple of the Premises to the Plaintiff and their Successors for ever (the said Woods, Under-woods and Timber-Trees excepted.) Now the Question is, as the Exception is made of the Woods, Under-woods and Timber-Trees, whether the Soil is not excepted also from the Plaintiff.

This Court is clear of Opinion, that the Intent of Sir *Simon* was, That the whole, as well the Soil as the said Woods, Under-woods and Timber-Trees, do pass by the said Will.

Soil and Timber-Trees (tho' Woods and Timber-Trees are excepted) pass to a charitable Use by a Devise of the Fee.

Popham contra Com. Desmond, 15 Car. 1. fo. 220.

THAT the Plaintiff was sole Daughter and Heir of Sir *Sebastian Harvey*, and Administratrix of Sir *James Harvey*, her Grandfather, of the Goods unadministred by the said Sir *Sebastian Harvey*; and that Sir *Thomas Gresham*, 21 *Eliz.* for Money borrowed, entred into a Statute of 2000 *l.* for Payment of 1000 *l.* to Sir *James Harvey*, and that Sir *Thomas Gresham* conveyed the said Premises to his Wife and her Heirs, and by his Will declared she should pay all

his Debts ; and that 23 *Eliz.* an Act of Parliament was made, that his Wife should be charged with all his Debts, and if she paid not the same, then Commissioners were to sell so much of the Premises as would pay the same ; and the Lady *Gresham*, 39 *Eliz.* died, and the Premises descended to Sir *William Read*, and on 19 *Jac.* he died, and the Premises descended to the Defendant, who refuses to pay the said Debr ; so the Suit is to have the said Premises sold for Payment of the said Debt and Damages according to the Act. And it appeared, that this Bill was exhibited in Pursuance of a Certificate made by the two Lord Chief Justices, and Lord Chief Baron, upon the Plaintiffs Petition to the Lords Commissioners for the Sale of the Premises, in which Certificate the said Judges thought fit, and declared that the Plaintiffs should take their Course by Bill in this Court, or otherwise, that it may appear, whether the Money mentioned in the Defeazance of the said Statute, was then due and unpaid, or no, and whether there was Cause to sell the said Manors and Lands, it being the 46th Year after the said Money ought to have been paid, and whether any Demand had been made thereof, or no.

ante 133.

Now

Now for that there is no mention of the Debt in the Inventory, in the Prerogative Court by Sir *Sebastian Harvey* of the Goods of Sir *James Harvey*, his Father, to whom the said Debt was first due, and for that it appeared that as there was originally a clear Debt not to be denied; there was also a greater quantity of Lands subject to the same if it had not been paid, and for that the same Debt grew due above 50 Years past, and the Plaintiff hath not made unto this Court any such Proof of any Demand or Pursuit of or for Recovery of the said Debt whereby this Court might declare any Opinion that the said Debt is unsatisfied, or however the said Manors and Lands, or any Part thereof ought to be sold for the Payment thereof, or that any Relief ought to be given to the Plaintiff for the same, especially after so many descents to several Heirs and Purchasors thereof by others, all of them as well Heirs as Purchasors, Strangers to the Payment of the Debts of the said Sir *Tho. Gresham*.

Bill to be relieved for a Debt upon a Statute after 50 Years, and after several Descents and Purchases of the Lands which were appointed to be sold for Payment of Debts, dismissed.

ante 109, 110

This Court dismiss the Plaintiffs Bill.

Askwith

*Askwith contra Chamberlain, 15 Car. 1.
fo. 309.*

Debtor made
Executor,
yet his Debt
to be Assets
and not ex-
tinct.

A Debtor made Executor shall not extinguish his Debt, but the same to be taken as Part of the Testator's personal Estate.

2-Max. Eq. 72

Booth contra Peckover, 15 Car. 1. fo. 404.

The King's
Award de-
creed.

*2. Inst. 142. ante
26. 2. 1. 304.*

THE Bill is to have an Award made by the King decreed, the Defendant demurred, and insisted the Matter ought to be tryed at Law.

This Court declared his Majesty is the Royal Fountain from whence all Streams flow.

Harding cont. Com. Suffolk, 15 Car. 1. f. 553.

THE late Earl of Suffolk granted an Annuity of 200 *l. per Ann.* out of the Manor of *Walden*, but the Defendant refuses to pay the said Annuity pretending there is no Manor known by the Name of *Walden tantum*, but only a Farm of 80 *l. per Ann.*

Now for that the Defendant chiefly endeavour'd to prove that the Manor of *Walden* alias *Chippen Walden* and *Brook Walden* are two distinct Manors, and that

that there is no Manor of *Walden tantum*, and if any, it is *Walden alias Chippen Walden*, and the same only liable to the Annuity, the value thereof being but 80 l. per Ann.

And the Plaintiff proved that the great Manor of *Walden* which the Defendant calls *Brook Walden* was the Manor meant to be subject to the said Annuity.

This Court with the Assistance of the Judges declared, and are of Opinion, that if there be two Manors known by the Name of *Walden* called *Walden*, and sometimes distinguished with an *alias*, and the one of them of small value, and the other of a much greater, that it is a good Averment in Law that the greater Manor should be liable to the Rent Charge.

Two Manors known by the Name of *W.* one of small the other of greater value, and an Annuity of 200 l. per Annum is granted out of the Manor of *W.* it's a good Averment that the greater Manor should be liable to the Rent Charge.

Goddard contra Goddard, 15 Car. 1.
fo. 248.

BILL of Review to reverse a Decree 22 Jac. the Plaintiff for Error says, the Cause was referred to Four Commissioners, and but Three certified; and also that the Lease, which the Plaintiff now insists on was not then in Issue, and the Plaintiff never consented to the Certificate.

2. l. 40. 4. Vern.
32. ante 70, 88.

This Court upon reading the Proofs, it appeared by Depositions of two Witnesses

A Decree for settling differences not reversed after 16 Years though there might be Error to ground a Bill of Review.

nesses there was an Agreement for settling the Differences, and in regard the Decree was so long since, and nothing done against the same in all this Time being 16 Years, this Court would not reverse the Decree.

Bourman contra Wild, 15 Car. 1. fo. 253, 266.

ante 106. Jurisdiction of Cinque Ports, post 103, 270.

THIS Court over-ruled the Jurisdiction of the Cinque-Ports.

Church cont. Roper, 15 Car. 1. fo. 436.

Award ante 104, 106, 2. 24, 366. 3. 20.

THE Plaintiff and Defendant referred the Differences in question to the Arbitration of Mr. *Hades* and Mr. *Lovelace*, who made an Agreement or Award therein as to the Lease of the Farm in Question to be surrendered to the Defendant upon Terms ; but the Plaintiff did insist upon allowance for Improvements of the said Farm, which Matters the said *Hades* and *Lovelace* not being so able to Judge of, they Nominated five other Persons, whereof four or three of them were to settle the Matter of Improvements, which the Plaintiff and Defendant assented unto, and bound themselves to stand to their Award ; that the Plaintiff performed his Part of the said Award made

made by *Hades* and *Lovelace*, and that three of the five said Arbitrators made their Award, and awarded 120 *l.* to be paid by the Defendant to the Plaintiff for his Improvements, and for the surrendring of his said Lease; but the same not being delivered to the Defendant punctually, whereby the Plaintiff might take Remedy thereby in Point of Law; and although the Defendant insisted, that the same was an Extrajudicial Award, and void in Law, yet for that the same was but Part of the Award made by Mr. *Hades* and Mr. *Lovelace*, and the Defendant had Benefit thereby, and gained Possession of the said Farm and otherwise. And this Court conceived that the Award made by three of the said five Arbitrators nominated by the said *Hades* and *Lovelace*, was made in pursuance of the Award of *Hades* and *Lovelace*, and in Consummation thereof, and was, and ought in Equity to be deemed as an entire Award with theirs, which was in part executed, and after the Plaintiff hath lost his Lease and paid his Rent, and is left remediless for his Money intended him.

Award made by three Persons nominated by two Arbitrators by assent decreed good in Equity.

This Court is clear of Opinion, that the Award made by the said three Arbitrators ought in all Equity to be performed by both Parties, and decreed accordingly.

Bishop

Bishop contra Bishop, 15 Car. 1. fo. 59.

1. Chancery
Cases, 40.

THE Bill is to have an Award decreed and performed. It was voluntarily referred to Mr. Justice *Crook* by the Parties, Plaintiff and Defendant to end the Difference between them, who made his Award, and the Bill also chargeth the Defendant to make a Discovery of the Breach of the said Award.

Award ex-
trajudicial.

*Vol. 2. 304. Vante
86.*

If one Party perform his Part of the Award, this Court may compel the other Party to perform his, though the Award was not made originally by the Direction of this Court.

The Defendant insists, that the said Award was merely voluntary and extrajudicial, and made without the Directions of this Court, and that both Parties did rely upon their Bonds mutually given for the Performance of the said Award. And as to the Bond entred into for the Performance of the Award, and the pretended Breach thereof, the Defendant insists it is put in Suit by the Plaintiff at Law, and that the Defendant is not bound by Law to answer upon Oath any such Matter against himself as may be any Evidence to bring him within the Penalty of the said Bond. Now as concerning the said Award, forasmuch as the Plaintiff hath performed the same, his Lordship declared it was proper Suit in this Court to compel the Defendant to perform it on his Part, though the said Award were not made originally by any Direction of this Court.

The Defendant insisted, that the Part of the said Award was chiefly insisted upon in the said Bill, which did bar the Defendant, being Tenant in Tail, from that Power which the Law gives him.

The Bill charging that Sir *Thomas Bishop* Father of the Plaintiff and Defendant, was seized to him and his Heirs Males with the Fee expectant of divers Lands in *Henfield*, and the Plaintiff conceiving he had been seized of the Lands in *Henfield*, conveyed the same to the Defendant and his Heirs Males of his Body, having the Fee in himself, and there being a Deed of Gift made of the Testator's Goods in *Henfield* unto the Defendant in Trust for the Testator's Wife, the Mother of the Plaintiff and Defendant, and after her Decease, in Trust for the Defendant.

That Difference arising about the said Estate Tail, Mr. Justice *Crook* awarded that the Defendant to enjoy a former Estate Tail settled upon him and the Heirs Males of his Body by the said Testator, and the Plaintiff to confirm the said Estate Tail to the Charge of the Defendant, and that the Defendant should do no Act to debar or discontinue the said Estate Tail, or the Remainder of the Plaintiff without the Plaintiff's Consent, except it be for a Joynment for his Wife.

His

Its against
the Course
of Chancery
to decree a
Perpetuity.

2. K. 29. 60. 172.
3. K. 17.

The Defen-
dant shall not
discover any
Thing against
himself to
charge him-
self with the
Penalty of
the Bond of
Arbitration.

His Lordship, to this Part of the Award, declared it was absolutely against the constant Course of this Court to decree a Perpetuity, or give any Relief in that Case, and as to that Point held the Defendants Demurrer to be good ; but as to the performing the said Award, this Court ordered the Defendant to answer, and overrule the Demurrer.

And as touching the Bond for the Performance of the Award, his Lordship saw no Colour that the Defendant should discover any Thing against himself whereby to charge himself with the Penalty of the Bond.

Bales contra Procter, 15 Car. 1. fo. 709.

THE Bill is to be relieved for Mesuages which the Plaintiff insists are descended unto him in Tail, whereof the Plaintiff's Father, 18 *Eliz.* suffered a Recovery to one *Garnet* and *John Bales* and their Heirs, and covenanted to levy a Fine the same Year in Consideration of 20 *l.* to be paid to him ; and also to be relieved for two Annuities of 6 *l.* per Annum to be granted out of the said Premises by the said Recoverors during his Life which the Plaintiff insists was not paid and so the Premises ought to descend to him in Tail.

The

The Defendant insists, that they are Purchasers for valuable Consideration, and plead and demur, for that a Recovery will bar an Estate Tail without a Fine, so as the only Point of Equity in the Plaintiffs Bill is for Non-payment of the said 20 *l.* and the two 6 *l.* *per Annum* Annuities supposed to be in 18 *Eliz.* which the Defendant *Procter* being a Purchaser at the sixth Hand, hopes he shall not be now compelled to prove Payment of, being 65 Years since the Annuities were due, and 31 Years since the Death of the Plaintiff's Father, who all his Life-time never complained of it, and in 12 *Jac.* a Fine was levied by *Fairclough* against *Bull* and others then in Possession, and another Fine unto the Defendant and his Trustees by one *Sambrook*, under which Fines the Defendant claims; and in 12 & 13 *Car.* 1. the Plaintiff was Non-suited on an Ejectment brought, and the Defendant *Hansley* and his Wife claim under the said Recovery, and a Fine levied in 6 *Jac.* of the Mesuages.

After Purchases and Fines, and above 30 Years quiet Possession, without payments or Suit, the Annuities not relieveable here.

This Court dismiss the Plaintiff's Bill.

Nevil contra Broughton, 16 *Car.* 1. f. 504.

THIS Court declared that a general Clause in a Will ought not to prejudice a particular Devise.

L

Peyton

A general Clause in a Will not to prejudice a particular Devise.

Peyton contra Green, 16 Car. 1. fo. 569.

The Defendant's own Oath a good Proof in an Account of 20 Years standing.

2. S. V. 39.

THIS Court ordered, that in regard the Account in Question is of twenty Years standing, the Defendant shall prove his Account by his own Oath for what he cannot prove by Books and cancelled Bonds; for that after so many Years his own Oath must be accepted as a Proof in this Case.

Leach contra Dean, 16 Car. 1. fo. 577.

THE Plaintiff's Suit is to be relieved upon Articles of Agreement for the Purchase of Lands from the Defendant *Richard Dean*, who before the said Articles had by Deed conveyed the Premises to the Defendant *Roger Dean* his Son.

2. S. V. 74, 265, 266. ante 132 - post 173. This Court, with the Assistance of the Judges, declared, That the said Deed of Uses so made to his Son *Roger* as aforesaid being a voluntary Conveyance, and the said *Richard Dean* selling the Premises to the Plaintiff for valuable Considerations, the said voluntary Conveyance was a Fraud, and that the tendering of the Purchase Money by the Plaintiff was as good a Performance of the Contract on his Part as if the Money were paid. And as for

Voluntary Conveyance when fraudulent as to Purchases, and yet to what purpose available.

the Defendant *Roger Dean*, it is but just that he should be in the same Case as his Father, as if his Father had never made the Conveyance; and decreed the Articles to be performed; but as to the voluntary Conveyance, the same is not hereby impeached as between the Father and the Son for any Advancement, or any other Thing thereby settled on the said Son, other than making good the said Articles of Agreement aforesaid, but the Trustees to be paid their Debts and Ingagements out of the Purchase-Money.

Articles of Purchase decreed to be performed against a voluntary Conveyance before the Articles.

post 163-173, 277. Mar. 29. 69. V.

Pickering contra Keeling and Pickering,
16 Car. 1. fo. 292.

THAT *Thomas Pickering* deceased, Father of the Defendant *Tho. Pickering*, and the Defendant *Thomas Pickering* by Deed 16 Jac. settled Lands to several Uses charged with an Annuity or Rent-Charge of 20 l. per Annum to be paid to the Plaintiff; but the Defendants having gotten seized of the said Lands, and got the said Deed into their Hands, refuse to pay the said Annuity.

The Defendants insist, That the said Deed is void in Law by reason of a former Deed made 21 Jac. for valuable Considerations whereby the said Lands were conveyed in Fee without any Rent-Charge.

L 2

This

Annuity
granted
without a
valuable
considerati-
on not re-
lieved here.

post-157.

This Court upon reading the said Deed, the Plaintiff not proving that the said Annuity was granted upon any valuable Consideration, whereby this Court might be induced to set up and make good the said Deed in Equity, This Court saw no Cause to relieve the Plaintiff herein, but dismiss'd the Bill.

*Press contra Hinchman, 16 Car. 1.
fo. 325.*

The Act of
a present In-
cumbent not
to bind a
Successor.

THE Bill is to have a Lease of the Parsonage of *Portland*, heretofore made by one *Green* to one *Peers*, under whom the Plaintiff claims, made good and confirmed to the Plaintiff according to a Decree made by the Consent of the Defendant *Steedly*, whilst he was there Incumbent, and the Defendant *Hinchman* is the now Incumbent, and the Plaintiff would have him bound thereby, and compelled to confirm the same; which this Court on reading the Decree saw no Cause to do. This Court being clear of Opinion, that the Act of a present Incumbent cannot bind his Successor, and so dismiss'd the Plaintiff's Bill.

St. Ni.

St. Nicholas contra Harris, 17 Car. 1.
fo. 206.

THE Bill is to be relieved against a Bond of 300 l. entred into by the Plaintiff *Eliz.* conditioned that if she did pay *Timothy* 15 l. per Annum, during the Plaintiff's Life, then the said Bond to be void But the Plaintiff pretended that the said Bond was for the Performance of an Agreement which was, by the Death of the said *Timothy*, become impossible to be performed, and so the Bond ought to be discharged.

Bond to pay
15 l. per An.
during a Life.

Upon reading the Proofs, this Court would not relieve the Plaintiff against the said Bond, and ordered the Plaintiff to pay the 15 l. per Annum, and Arrears with Damages.

Swain contra *Wall*, 17 Car. 1. fo. 16,
148, 252, 315.

THAT the Plaintiff and Defendant and one *Jorden*, 16 Jac. became jointly bound in a Bond of 500 l. to the City of *London* for the Payment of 300 l. in *Febr.* then next, which 300 l. was imployed by one *Shadwel* for procuring the Place of Serjeant at Arms, which Place afterwards *Shadwel* assigned

L 3

to

ante 34, 35, 120,
121,
1. Ch. C. 32, 223,
224, 271, 246.
Kern. 440, 547.

to one *Hunt* for good Consideration, which *Hunt* by Direction and Agreement of the said *Shadwel* and the Plaintiff and Defendant *Jorden* entred into several Counter-Bonds unto the Plaintiff, and *Jorden* and *Wall*, for their Indempnity from the said Bond of 500 *l.* entred in to the City of *London*; and thereupon it was agreed, that if *Hunt* failed to pay the said Debt to the City, then the Plaintiff, and *Jorden* and *Wall* should pay their respective Parts of the said Debt to the City, and *Hunt* died possessed of the said Place insolvent, so as the Plaintiffs *Jorden* and *Wall* were only liable to pay the said Debt; and the City calling in the said Debt, *Wall* was not able to pay his said Share, and the Plaintiff and *Jorden* in 1622. took up 300 *l.* of one *Ducket* and *Bates*, and were bound unto them in several Obligations for Repayment thereof, and therewith paid the said Debt to the City, and afterwards *Jorden* became insolvent, so as the Plaintiff on the behalf of himself and *Jorden* and *Wall*, was forced to pay the said 300 *l.* to *Ducket* and *Bates*, and all Interest; and *Wall* being afterwards of sufficient Estate to pay his rateable Part of the 300 *l.* and Interest paid by the Plaintiff as aforesaid; so the Bill is, that the Defendant *Wall* may pay to the Plaintiff a Moiety of the 300 *l.* and Interest, *Jorden* being insolvent.

The Defendant *Wall* insisted, that the said Defendant *Wall* was not bound in the Bonds given to *Ducket* and *Bates*, but only in the first Bond wherein the Plaintiff and *Jorden* and the Defendant *Wall* were bound, and by the Agreement they three were to bear their respective Parts of the said 300 *l.* in case *Hunt* failed; besides the first Bond being delivered up and the Debt paid, the Defendant conceives himself totally freed thereof.

This Court upon hearing the Proofs is satisfied, that the said Defendant *Wall* ought to pay to the Plaintiff the third Part of the said 300 *l.* and did decree the said Defendant to pay 100 *l.* And as for the Damages for the same, forasmuch as the Plaintiff both by Bill and Replication doth only desire a rateable Part of the principal Money, and the said Damages by him paid, which was 300 *l.* and Damages but for nine Months. This Court saw no Cause to order more, and so ordered the said 100 *l.* and Damages only for nine Months; but the Plaintiff insisted that there are Precedents to enforce the Defendant to pay a Moiety of the said 300 *l.* and Damages.

The Court ordered Precedents to be produced for that Purpose.

The Plaintiff produced a Precedent in 5 Car. 1. inter *Peter* Plaintiff and *Rich*

Three are bound for *H.* in 300 *l.* and agree, that if *H.* failed, to bear their respective Parts of the Money, two of the Obligors proved insolvent, the third paid the 300 *l.* the other Obligor becomes able, he shall be compelled to pay a third Part, not a Moiety.

and *Sheppard* Defendants, by which the said Defendant *Rich* in respect the other Defendant *Sheppard* became insolvent, was ordered to pay the Plaintiff *Peter Cosvery* with the said *Rich* and *Sheppard* a Moiety of the Debt and Damages there in Question.

Mr. Justice *Hutton* was to consider of this Matter.

Mr. Justice *Hutton* thinks fit the Defendant shall pay the 100 *l.* and 7 *l.* 10 *s.* for nine Months damages, and if the Plaintiff hath recovered or received any thing towards the said 107 *l.* 10 *s.* of the Counter Security before mentioned, he is to allow the same to the Defendant.

This Court confirmed the Judges Order.

Perryman contra Dinham, 17 Car. 1.
fo. 585.

The Defendant committed to the Fleet for not performing a Decree and a Sequestration, and the Plaintiff put in Possession of the Lands, shall not be

THE Defendant being committed to the Fleet for not performing a Decree, a Sequestration was granted, and the Plaintiff put into Possession of the Lands: The Defendant insists that the Plaintiff ought not to have the Lands, the Defendant being in Prison, it being a double Execution.

But the Plaintiff insisted, that as this Case is where Money is lent upon Security by

by Lands, the Plaintiff ought to have the Lands till the Defendant hath paid the Money and Interest.

This Court with the Assistance of the Judges, were satisfied that the Plaintiff's holding the Lands was just and equitable, and that the Plaintiff ought to have the Lands absolutely assured, or else be satisfied the Money and Damages and Costs due to the Plaintiff before the Defendant be discharged of his Imprisonment, and that in the mean Time the Plaintiff do hold the Lands; but if the Defendant will assure the Lands, then he is to be discharged from his Imprisonment.

discharged till the Lands be assured to the Plaintiff, or Money and Damages satisfied.

Sequestration ante 64. post 100, 240.

Thomas contra North, 17 Car. 1. fo. 558.

THAT Nicholas Holmes being possessed of the Premises in Question April 1631 made his Will and devised his Messuages to the Plaintiff Nicholas Thomas his Godson, and to his Heirs forever; and the said Nicholas Holmes in December 1633. mortgaged the said Premises to the Defendant North for 200 l. to be repaid at three Years end, and before the three Years end, the said Holmes fell sick, and declared he would not alter his said Will.

Revocat. of a Devise &c. ante 112, 114. 2. V. 71. 1. Cha. C. 105.

But the Defendant *John Holmes* claims the Premises as Uncle and next Heir to the said Testator *Holmes*, and hath entered on the Premises taking Advantage of the Forfeiture, and brought a Suit into this Court against the Mortgagee, and had a Decree for the Equity of Redemption, and did accordingly redeem the same and disposed thereof.

A Devise of Lands, and after Devisor mortgageth the Lands, it's a Revocation.

The Defendant insisting, that in Case such a Will was made, the said Will can be no Bar to the Defendant's said Title as Heir, in respect the Testator did mortgage the Premises after the making of the Will, if any were, which was a Revocation thereof, he having but a conditional Estate, and the Plaintiff did not make it appear that there was any other subsequent Will made, or a new Publication of the said former Will after the said *Nicholas* mortgaged the Premises.

This Court saw no Ground to give the Plaintiff any Relief, and dismiss'd the Plaintiff's Bill.

*Smith contra Hopton, 18 Car. 1.
fo. 404.*

*The Heirs Lands
relicio. Ye.*

THAT Sir Owen Smith did borrow of Humfrey Beddingfield 1707 l. and for the Security thereof made a Lease of the Lands in Wighton and Walsingham for 100 Years, and also being otherwise indebted, and for the Payment thereof the said Sir Owen, 9 Car. 1. conveyed other Lands to one Saunders, and afterwards in August, 9 Car. 1. reciting the last Deed, conveyed to Trustees several Lands to the use of Sir Owen for Life, and afterwards to the use of Sir Thomas Hopton and Arthur Hopton and their Heirs the said Lands and Premises on Trust to sell the same for the Payment of Debts and Legacies; that the said Sir Owen in 1637. died without Issue, whereby the Reversion in Fee of the leased Premises descended unto Thomas Smith, the Plaintiff's Father, as Uncle and next Heir to the said Sir Owen, and that at the death of the said Sir Owen, 678 l. of the 1707 l. remaining unpaid, the said Thomas Smith and the Plaintiff to save the forfeiture, paid the same to the said Beddingfield; and the Plaintiff, as Heir to the said Sir Owen and his Surety, was forced to pay divers of his Debts, and the

the Plaintiff's Father died, and the Plaintiff is both their Heir and Executor, who was at the Request of the said Sir Owen Smith, bound as Surety for him in several Obligations, and the Plaintiff's Suit is first to compel the Defendant the Lady Smith, being Executrix of the said Sir Owen Smith, who hath possessed her self of his personal Estate, to reimburse the Plaintiff the said 672 l. paid by the said Thomas Smith the said Plaintiff's Father, and the Plaintiff out of the personal Estate of the said Sir Owen, it being a Debt mentioned in the Deed aforesaid.

The Heir's
Land liable
to pay Debts,
relieved a-
gainst the
Executors so
far as the
personal E-
state will
extend.

And the Plaintiff insisted, that in case there be a personal Estate sufficient to satisfy Debts, the same ought not to lie upon the Heir, whom though this Court will not discharge against the Creditors, yet this Court hath often relieved against the Executor and Administrator for a Re-imburſing of such Debts as he should so pay, so far as the personal Estate will extend; and the Plaintiff insists to have the 672 l. if not out of the personal Estate, then out of the Sale of the said Lands appointed to be sold as aforesaid; and also to have Satisfaction for the Debts for which the Plaintiff was bound for the said Sir Owen Smith.

This

2. ante 10.
2. Kent. 366, 367.
1. Vern. 204, 324.
2. Vern. 439, 416,
500, 424.

This Court ordered the Plaintiff to produce Precedents where Relief hath been given to an Heir against an Executor or Administrator touching the said

*29. Ab. 260, 269.
1. Ch. C. 74. 2. Ch. C. 5.
2. Palk. 449.*

672 l. The Defendant confessing the Charge of the Bill to be true, this Court was of Opinion, that the Defendant the Lady *Smith* being privy to the Trust aforesaid, is liable to satisfie the Debts of the said *Sir Owen* so far as the Land, which she purchased of the said *Owen Smith*, will extend.

*Wright contra Moor, 21 Car. 1.
fo. 485.*

THIS Court declared they could not relieve the Plaintiff against a Bond freely and voluntarily entred into without Compulsion or Restraint, though no Consideration or Fraud was used for; and this Court looked upon it as entred into upon some Consideration, there having been Dealings between the Plaintiff and Defendant in Trade, and would not relieve the Plaintiff against the Judgment had thereon, but dismiss'd the

A Bond voluntarily entred into without Consideration appearing, but presumed, not relievable here after Judgment.

*2. ante 110, 119, 148.
29. Ab. 84.*

Wiseman

Wiseman contra Roper, 21 Car. 1.
fo. 268, 464.

24. Ab. 17. Cary 84.
1. Cha. C. 39, 42,
294. - 2. Km. 423.

THAT the Defendant *Roper* by Articles between him and Sir *Thomas Wiseman*, the Plaintiff's Father, reciting, That whereas there was a Marriage lately had between the Plaintiff, Nephew of the Defendant *Roper*, and *Anne* his Wife without the Privy, Consent or good Liking of the said Sir *Thomas Wiseman*, did as well in Consideration of the Defendant's natural Love and Affection to the Plaintiff as for the regaining of the good Will and Affection of the said Sir *Thomas* to the Plaintiff and his Wife, they did covenant with the said Sir *Thomas Wiseman* to convey within one Month after the death of Sir *Anthony Roper*, the Defendant's Brother, unto the Plaintiff and *Anne* his Wife, or the Survivor of them and the Heirs of the Plaintiff, the Manor of *Haber* with the Appurtenances reserving an Estate to the Defendant for his Life; and that in Case the said Manor which was then the Inheritance of the said Sir *Anthony Roper* should be alienated by Sir *Anthony*, so that the same should not descend unto the Defendant, then the Defendant would assure other Lands of that Value, and if no Lands of that Value

Value should descend to the Defendant from the said Sir *Anthony*, then the Defendant would secure 4000 *l.* to be paid immediately after the Defendant's Death to the Plaintiff, or *Anne* his then Wife, or the Heirs of the Plaintiff, and gave a Statute of 5000 *l.* for the Performance of the Premises. That the said Sir *Anthony* in 1641. died, and the Manour of *Haber* descended to the Defendant, but charged with great Debts, so the Plaintiff's Bill is to compel the Defendant to perform the said Articles according to the aforesaid Covenants.

The Defendant insists, that the Articles are voluntarily entred into on no Consideration, but only to procure a Reconciliation between the Plaintiff and his Father, and that the same was a Covenant of one not in Possession, not having any Estate therein at that Time to settle Lands in Case they should descend unto him, whereof at the Time of the Covenant he had no Power whereby he might charge the same, but a bare Possibility in Case the said Sir *Anthony Roper* did not alien them.

Covenant to perform Articles for the settling Lands of which the Covenantor had no Possession, but only a Possibility of descent, after a descent decreed to be settled.

This Court nevertheless was of Opinion that the Consideration was good and sufficient, but it being Matter of great Weight and Consequence, whether this Court shall give Relief to compel a Performance

formance of a Covenant of this Nature entred when the Covenantor had no Power over the Lands to be settled, for which the Defendant insists there is no Precedent to be shewed.

This Court ordered Precedents to be searched for.

That divers Precedents on both Sides were produced and read in Court, which this Court took Time to advise of, and then would give their Resolution thereon, which having done, they declared and were of Opinion, that the Bill being to have the Performance of an Agreement made by the Defendant himself, which appearing to be a legal and good Agreement, This Court do find warranted by the Precedents and constant Practice of this Court, where such Agreements have been made, upon which the Party can only recover Damages at Law, for this Court to decree the Thing in *specie* wherein this Court doth not bind the Interest of the Lands, but inforce the Party to perform his own Agreement, and decree the Defendant to perform the said Articles, and convey accordingly.

Agreement
on which the
Party can
only recover
damages at
Law decreed
to be per-
formed in
specie.

Underwritten

Underwood contra Swain, 1649. fo. 177.

THE Case is, That *Philip Swain* being seized in Fee of the Lands in question, by Will devised the same to *Willon Condition* *John Swain* of *Langston* his Kinsman and his Heirs, in consideration that he should pay all his Debts and Legacies, by which Will the said *Philip*, appointed his Legacies to be paid within two Months after the Death of *Sibil* his Wife, who had an Estate in the Premises for her Life, and lived about 12 Years after the Death of the said *Philip*, and in the mean Time married the Plaintiff *Underwood*, who having an Estate in right of his said Wife for her Life, purchased the Reversion thereof after the Death of the said *John Swain* of *Langston*, of *John Swain* the Son and Heir of the said *John Swain* of *Langston*, the Devisee of the said *Philip Swain*, and afterwards the said Plaintiff *Underwood* paid the Debts of the said *Philip* and all the Legacies, except two five Pounds to two of the Legatees, and for Non-payment whereof the Defendant *John Swain* entred on the Premises as Heir at Law, the Condition being broken. But before the said Entry the Plaintiff *Underwood* sold the Premises to *Toby Payn*, and the said *Toby Payn*

Condition broken.

M

Payn

Payn devised the Premises to the now Plaintiffs *Thomas* and *John Payn*, and died, pending this Suit, which the now Plaintiff revived.

The Court of Equity will give Relief against an Entry made by the Heir for the Breach of a Condition.

This Case was reduced to this short Question, *viz.* Whether a Court of Equity can controule the Law, or give Relief against an Entry made by the Heir for the Breach of a Condition.

This Court upon View of Precedents in Cases of like Nature was clear of Opinion to give Relief to the Plaintiffs notwithstanding the said Forfeiture, and decreed the Plaintiffs and their Heirs to enjoy the Premises against the Defendants and their Heirs.

Thin contra Thin, 1650. fo. 290.

THE Bill is to have Lands settled according to a Marriage Agreement and to supply a defect in a Conveyance of 15 Car. 1. made pursuant to the said Agreement, the Deed being since miscarried and lost, which Deed contained a Revocation of Uses limited in former Deeds, in which Deed of 15 Car. these Words, *viz.* (*Shall stand and be seized*) are not mentioned, for want whereof the Defendant at a Tryal at Law in Ejectment got a Verdict.

The omission of these Words in a Settlement (*Stand and be seized*) relieved.

The Plaintiff insisted, that if by the Defect in the said Deed the Estate intended

tended to the Plaintiff should be avoided, then the said former Settlements would be wholly revoked, and the Plaintiff left altogether unprovided for, contrary to his Father's Intentions and the Agreement aforesaid.

This Court upon perusal of Precedents, and advising with the Judges (the Case being of Weight) are fully satisfied, that the said Deed was not voluntary or unduly obtained, but pursuant and in order to the Marriage Agreement, and was made on just and good Considerations of Marriage, although it be not so exprest in the Deed, and of natural Affection and Settlement of an Estate on his Posterity, and no Fraud therein.

Voluntary
Conveyance;

ante 31-130.

post 173, 277.

Averment.

And this Court is of Opinion, that it cannot stand with Equity or Justice that the said Conveyance made with intent to advance the Plaintiff's Marriage should destroy the former legal Settlements, whereby he stood provided for, and leave him totally destitute, and no Ways provided for through want of those Words (*Shall stand and be seized*) in the said Deed, which if wanting, might be probably omitted by the negligence or slip of the Clerk that ingrossed it, and therefore this Court is of Opinion that the Plaintiff ought to be relieved in Equity, and decreed the Plaintiff and the

Heirs of his Body according to the Limitation of the said Deed shall notwithstanding the omission of the aforesaid Words (*shall stand and be seized*) in the said Deed, and notwithstanding any Act done by the Defendant, enjoy against the Defendant, his Heirs, &c. as well as if the said Words had been perfectly in the said Deed, and the said Defect not happened therein; and the said Defendant, his Heirs, &c. to take no Advantage of the said Omission.

Domina Ashton cont. Ashton, 1650. f. 534.

Alimony decreed.

ante 44.
post 106, 107.
1. Chanc. l. 250.
Eq. Abr. 67

THE Plaintiffs Suit is to be relieved against the Defendant, her Husband, for Alimony, which upon several long Hearings and all Consideration imaginable taken in this Cause, being a Case of great Consequence and between Persons of Quality, the Defendant refusing to comply with the Courts Mediation.

This Court decreed the Defendant to pay to the Plaintiff 300 l. *per annum* so long as they lived apart.

Ollibear contra Bromsal, 1651. f. 189.

Surplusage of an Estate decreed to the Heir, not to the Executor.

THE Surplusage of an Estate after Debts, Legacies and Portions paid, ordered by this Court not to go to the Executor, but to the Heir.

Dutchess

post 106-3

*This now set
= tled contra*

Dutcheſs of *Hamilton* contra Counteſs
of *Dirlton*, and Lord *Cranborne*, 1654.
fo. 133^o.

TH A T *James* Earl of *Dirlton* being
ſeized in Fee of the Manor of
Wauborough and *Gilford Park*, mortgaged *Mortgage In*
the ſame on the 24th of *May*, 1649. to *Finch Preſtwood*, and *Pratt* and their
Heirs for 2500 *l.* redeemable on the re-
payment thereof with Intereſt, whereas
the ſaid Money was never borrowed by
the ſaid Earl, but the ſaid Conveyance
was in *Trust* for the ſaid Earl, and to
ſuch to whom he ſhould diſpoſe the Pre-
miſes. But in the ſame Month of *May*,
the ſaid Earl borrowed of the Defendant
Weston 2500 *l.* and on the 7th of *May*,
1649. conveyed the Manour of *Waubo-*
rough and *Ridglands* and other Lands un-
to the Defendant *Weston* and his Heirs
redeemable on the re-payment thereof
with Intereſt. And for Non-payment the
Premiſes became forfeited in the ſaid Earl
of *Dirlton's* Life Time, who having ſuch
Title, *Trust* and Equity of Redemption
in the ſaid Premiſes by Deed 24 *April*,
1650. granted to the Counteſs of *Dirlton*
the ſaid Premiſes for her Life, and by
another Deed 27 *April*, 1650. declaring
his Mind touching the Inheritance, and
M 3 *Trust*

Trust.

root 260.
Deed or
Grant and
Declaration
of Intention,
good againſt
a Codicil of
a Will.

Lands mort-
gaged settled
in Trust.

Trust thereof did grant to the Plaintiff and his Heirs all the Manor of *Wauborough*, *Gilford Park* and the Premises from and after the Death of the Plaintiff's Mother, the said Countess of *Dirlton*, and after the said Earl died possessed of the said Premises, leaving the Plaintiff and Defendant the Lady *Cranborne*, his Daughters and Coheirs, and the Plaintiff by virtue of the said Grant and the Declaration of the said Earl, being intituled to the Trust of the said Premises, conveyed to the said *Finch*, *Frestwood*, and *Pratt* after the Death of the said Countess of *Dirlton* her Mother as aforesaid, seeks to have the same conveyed to her by the said Trustees, and also the said Manor of *Wauborough*, and the Premises mortgaged to the said *Weston*, subject to the Equity of Redemption.

The Defendants, the Trustees confessed the Trust aforesaid, and the Defendant the Lady *Cranborne*, insists that the said Earl had no Power to make the said Deed, neither can the same convey the Trust and Equity of Redemption nor could be so intended, the Intention of the said Earl appearing otherwise in a Codicil of the Earls Will dated the 16th of *April*, 1650, and if he had not made the Conveyances of the Premises to the Defendant, but been himself legally seized

of the Premises when he made the said Deed to the Plaintiff, it would not have been good in Law, and therefore ought not to be construed in Equity to be good to pass the said Trust and Equity of Redemption, and that the said Earl formerly often declared that his Land should equally descend to his two Daughters which was proved by Sir *John Scott* : But on reading the Deed 27 April, 1650. and the Declaration of the said Earl at the making thereof, that the Plaintiff should have all the said Premises as aforesaid, for that he sufficiently provided for the said Defendant before.

This Court being assisted with the Judges, was satisfied, that it was the clear Intention of the said Earl that the Plaintiff should have all the said Premises, and that by the said Deed and Declaration the Plaintiff is intitled unto the Trust and Equity of Redemption aforesaid, and decreed the Trustees to convey the same accordingly to the Plaintiff and her Heirs, and that the Defendant *Weston* and his Heirs after the Mortgage satisfied shall convey the Reversion after the Countess of *Dirlton's* Death to the Plaintiff and her Heirs, and decreed that the said Dutchess and her Heirs shall enjoy all the said Premises against the Defendant the Lady

Cranborne and the said Trustees, paying the proportion of the said Mortgage Money aforesaid.

Amby contra Gower, 1655. fo. 796.

*J. l. cited
1. Cha. Cas.
100.*

THE Bill is, that the Plaintiffs being Creditors, and Executors to Creditors of *Robert Walker* to have Lands sold according to the Will of the said *Robert Walker* for satisfaction of their Debts.

Devise that
Executors
shall sell
Lands, &c.
they do not
sell, decreed
that the Heir
shall joyn in
the Sale for
Payment of
Debts.

The Words of the said Will being: *My Will and Mind is, and I do hereby authorize that my Executors shall sell my Woodlands and Woods thereupon growing, called Barnes, to any Person or Persons whatsoever, and their Heirs and Assigns for ever, for the best value, with convenient speed as may be, and with the Money to pay all my just and due Debts.*

*2. Ventr. 350.
2. V. 24. 212.
Hardr. 204.
1. Cha. C. 29, 30, 07.
2. Ld. Coventry's Case*

The Question being whether the Executor of the said *Robert Walker* having not sold the said Lands according to the direction of the said Will, the Heirs of the said *Robert* shall be decreed to sell the same.

This Court with the Assistance of the Judges and reading of Precedents, declared that they were of Opinion, that the Plaintiffs ought to be relieved, and that the said

faid Lands and Woods thereon growing ought to be disposed of and sold, and that the Heirs of the faid *Robert* joyn in the Sale thereof for the Payment of the Debts, and decreed accordingly.

Smith cont. Valence, 1655. fo. 1489.

THE Defendant being a Mortgagee of the Premises, afterwards purchased the same for valuable consideration, and the Plaintiff having the Title of Redemption would before he redeem have the validity of the said Mortgage tried at Law.

But the Defendant insists that the Plaintiff may pay him his Principal Interest and Costs, or otherwise be at liberty to recover the Premises; and the Plaintiffs desiring he may not redeem till the Validity of the said Mortgage appear at Law, which the Defendants opposed alledging the Plaintiff ought then first to declare, whether he will redeem or not, it being against the Rules of Justice for the Plaintiff to have the Equity of Redemption from the Defendant after he had endeavoured to avoid his Title.

This Court on reading Precedents on the Plaintiffs part, was of Opinion that the Defendant being Purchaser for valuable Consideration, the Plaintiff ought now

Mortgagee purchaseth the Lands mortgaged, the Plaintiff who had Title of Redemption shall declare whether he will redeem or not before the validity of the Mortgage shall be tried at Law.

now to declare whether he will redeem the mortgaged Premises before he endeavour to avoid his Title, and that if he will redeem he ought to pay the Defendant all his principal Mony due thereon, with Damages and Costs, and the Plaintiff refusing, this Court dismissed the Plaintiff's Bill.

Cox contra Brown, 1656. fo. 558.

Lease forfeited by Alienation without Licence by Executor, relieved, it being sold for Payment of Debts. *See*

Dough R. 176.

THE Bill is to be relieved against the Forfeiture of a Lease, in which there is a Covenant that if the Lessees should let the Premises for any longer than three Years, except to the Wife or Children of the said Lessee, without Licence of the Lessor or his Assigns first had, then the said Lease to be void.

That the Defendants have entred upon the Premises on pretence that the Executors of the Lessor did alien the same to the Plaintiff without Licence, and have ousted the Plaintiff who purchased the same.

This Court on reading Precedents, forasmuch as the said Executors sold the Lease for Payment of Debts to which the same was liable, and if she had not been Executrix there had been no Forfeiture, This Court decreed the Plaintiff to be relieved against the said Forfeiture.

Welsh

Welden cont. *Rallison*, 1656. fo. 1088.

THAT *William Welden* for 600 *l.* lent, conveyed, and mortgaged Lands to *Lewis James* and his Heirs in 18 *Jac.* on Condition of Redemption, and acknowledged a Statute of 1000 *l.* to the said *James* for performance of Covenants in the Mortgage Deed, which Mortgage being forfeited, the said *Welden* in 1632, exhibited his Bill against the said *James* for Redemption, and in 1639. obtained a Decree which is signed and inrolled, but before the performance of the Decree, *James*, who since the Forfeiture, had incumbered the Premises, and the said *Welden* died, and the Heirs of *Welden* had Orders for to have the Benefit of the Decree against the Coheirs of the said *James*, and in 1646, the Heir of *Welden* exhibited his Bill for Redemption, and had a Decree to confirm the first Decree and then died, and the now Plaintiff *Welden*, his Brother and Heir, had Orders to have the Fruit of the said Decrees, and *Welden* appointed the Premises to be made to the Plaintiff *Goldston*.

But the Defendant *Rallison* to undermine the Decree in 1649, bought of the Executors of one *Alexander* two Bonds
of

of 200 *l.* apiece entred into by the said *James* in 1629, and also one Bond of 100 *l.* in 1642, and three Bonds entred into by the said *James* in 1637, for 300 *l.* which were assigned to *Rallison* in 1648, and brought also a Statute of 300 *l.* in 1629, and an Extent for 300 *l.* which Extent was not made till 1649, upon all which Bonds and Statutes the said *Rallison* hath extended the Premises which the Plaintiff insists is all *pendente lite*.

The Defendant *Rallison* insists he is a Purchasor for valuable consideration of the said Incumbrances, and a Stranger, and not a Party nor privy to the former Suits, and a real Creditor for 635 *l.* and after so long a Forfeiture he ought not be bound by the said Decrees.

Judgments
and Statutes
bought and
laid upon
Lands mort-
gaged and a
long time
forfeited set
aside, they
being after
an old De-
cree for Re-
demption.

This Court declared that the Judgments recovered on the said Bonds ought not to attach the said mortgaged Premises, they being after the first Decree, and decreed them and the Extents thereon to be set aside. And all Leases made by *James* at Rack, and improved Rent, are to be allowed and stand good, otherwise not.

Whitehorn

Whitehorn contra Edwards, 1656.
fo. 335.

TH E Bill is to compel the Defendant to perform a Trust, and to redeem the Premises: The Defendant denies the Trust, and insists that the Premises were conveyed to him absolutely for valuable Considerations, and that the Plaintiff hath denied the same to be a Trust in several Answers.

This Court nevertheless decreed the Defendant to come to an account with the Plaintiff touching the Premises.

Goodwin contra Goodwin, 1658. f. 922.

TH E Question being between two voluntary Deeds, the Defendant claiming by the first and executed, and the Plaintiff claims by the later.

This Court ordered the Plaintiff to produce Precedents where a former voluntary Conveyance hath been by this Court set aside as this Case is, that a subsequent Conveyance which is also voluntary may take Place.

This Court dismiss the Plaintiff's Bill.

Trust. *ante* 4, 11, 13, 57, 52, 101, 110.

Two voluntary Conveyances, one set up against the other.

ante 73, 130, 163,
Post 277, 192.
1. Vern. 100, 101.
29. Abr. 23. C. 1.
Max. Eq. 60. C. 16.
ante 132, 146.

Cooper contra Tragonwel, 1659. f. 134, 178.

Witnesses examined to support an Entail.

THE Bill is to have Liberty to examine Witnesses to support an Entail in this Court: The Defendant pleaded, and this Court would see Precedents whether the Defendant should answer the Plaintiff's Bill so far as to enable the Plaintiff to examine Witnesses to the purpose aforesaid.

This Court ordered the Plaintiff to reply to the Defendants Plea, and to examine to whatsoever Matter the said Defendant hath put in Issue to his Plea.

R E

REPORTS AND CASES

Taken and adjudged in the
COURT of CHANCERY
In the REIGN of
King CHARLES II.

price contra Flower, 12 Car. 2 fo. 485.

*J. C. Rolfe, 27. & Lord Ch. Nottingham's
M. B. Rolfe, 27. & Lord Ch. Nottingham's*
THIS is on a Case stated, (*viz.*) Settlement
That *John Flower* the elder be- of a Lease.
ing possess by several Leases and
Assignments for several Terms of Years
the Premises, made his Will, and *Elia-*
his Wife Executrix, who proved the
me, and made her Will, and *Jeffery*
on of the said *John* and *Elleanor* her Exe-
tor ; and the said *Jeffery* made his Will,
and

Perpetuity.

and the Plaintiff *Elianor*, and the Defendant *John Flower* his only Children his Executors, and died, and by his said Will bequeathed unto them all his personal Estate to be divided between them, and the said *John Flower* the elder by Deed 4 Aug. 38 Eliz. in consideration of a Marriage between the said *Jeffery* and *Mary Compton*, assigned the Premises and Terms therein unto *Anthony Self* and others, to the Use of the said *John Flower* the elder for Life, and the Trustees, whereof the said *Anthony Self* was the Survivor, their Executors and Assigns should after the said *John's* decease stand possess of the North part of the Premises to the Use of the said *Elianor Flower* for her Life, and after to *Jeffery* for Life, and after to his eldest Son of the Body of *Mary Compton* for Life, and after to the second Son of the said *Jeffery* and *Mary*, and after to the next Son for Life, and so from Son to Son of the said *Jeffery*, the one after the other for Life, until the end of the said Terms; and if the said *Jeffery* should die without any Son, or Issue Male of his Body, either by the said *Mary*, or otherwise, or if all his Sons should die before the end of the said Terms, then he limits the same to *John Flower*, Son of the said *John* the elder, and *John* his Son; and that the said Trustees

Trustees should stand possess of the Residue of the Premises after the Death of the said *John Flower* the Elder, to the Use of the said *Jeffery* for Life, and after to the said *Mary* for Life, and after to the Eldest Son of the said *Jeffery* and *Mary* for Life, and after to the next Heir Male of *Jeffery* and *Mary* for Life, and so from one Heir Male to the other Heir Male of the said *Jeffery*, one after the other for Life, until the End of the said Terms; and if the said *Jeffery* should die without any Son, or Issue Male by the said *Mary*, or otherwise, or if all his Sons should die before the End of the said Terms, then to the Use of his, the said *Jeffery's* and *Mary's* Daughter and Daughters; and for Default thereof, to the Use of the Executors and Assigns of the said *Jeffery*; and the said *Jeffery* survived *John* the Elder, and *Elleanor* his Wife, and the said *John Flower* his Brother and Nephew, and also *Mary Compton*, and after married *Ellen Bowman*, by whom he had Issue the Plaintiff *Elleanor* and the Defendant *Thomas* his only Children, and the Defendant *Thomas Flower* entred upon the Premises in 1650. and hath enjoyed them ever since.

N

This

Lease in
Trust for the
first Son for
Life, after to
the second
for Life, &c.
and after to
Daughters,
&c. (not in
esse) void and
vests in the
Executors.

This Court, with the Assistance of the Judges, having advisedly considered of the Case, are clearly of Opinion, that the Remainders or Limitations of the Trust of the said Term to the first, and other Son of the said *Jeffery* before they were in Being, and also the subsequent Limitations and Remainders were utterly void, and tended to raise and create a Perpetuity contrary to the Rules of Law, and the whole Trusts of the said Terms vested in the said *Jeffery*, either as Executor of the said *John* the elder that created the same, or immediately in Respect of the said void Remainders or Limitations; and also that the Trust of the said whole Estate and Terms doth belong to the Plaintiff *Elleanor*, and the Defendant *Thomas Flower*, Executors of the said *Jeffery* equally to be divided between them, and decreed the Lands according to the said Trust to go accordingly.

Venables contra Foyle, 12 Car. 2. fol. 670.

Writ of Assistance to
put the Plaintiff in Possession.

post 100, 100.

THE Plaintiff moves for a Writ of Assistance to be put into Possession, according to a Decree and Injunction which had been served, but disobeyed.

The

The Defendant insists, that the Plaintiff ought to prosecute the Defendant with all Process of Contempt to enforce the Defendant to yield Obedience to the Decree before any Injunction or Writ of Assistance can regularly be awarded for Possession, by the Rules of this Court, and that there hath been no other Process than an Attachment issued against the Defendant for Breach of the Injunction or Non-performance of the Decree; it was referred to the Six Clerks.

The Six Clerks certified, that they do find that by a Rule in the Lord *Bacon's* Time all Process of Contempt ought to issue against the Person to a Serjeant at Arms before an Injunction should issue for the Possession; and that they had seen Precedents in Queen *Elizabeth's* Time, and the Beginning of King *James*, agreeing with the said Rule, but they did not conceive that the said Rule did bind the Prerogative of this Court, but that if the Court saw just Cause upon Motion, upon an Attachment only, to grant an Injunction, and that there are divers Precedents to that Purpose, and that by the late Rules the Course hath been upon Affidavit of Personal Service of the Decree and an Attachment upon Motion to grant an Injunction, and upon Contempt there-

of a Commission was granted to put and keep the Party in Possession.

This Court upon reading Precedents in the Lord *Coventry's* Time, and of Affidavits, whereby it appears that Possession hath been demanded, and refused to be delivered according to the Injunction which was served and disobeyed, ordered that a Commission or a Writ of Assistance be awarded, to put and keep the Plaintiff or his Agents in Possession, *nisi Causa*.

All Process of Contempt to issue out in Course before an Injunction or Writ of Assistance to put the Party in Possession.

The Defendant insisted, that though he be prosecuted to a Serjeant at Arms, that by the Course of the Court after a Serjeant at Arms an Injunction for Possession must be first granted and served, and the Party in Contempt for not obeying thereof, before a Writ of Assistance is to issue, especially against Tenants of the Premises who were not Parties to the Suit, and that there is no Injunction for Possession, since the Serjeant at Arms; but in the End this Court discharged the Writ of Assistance and Injunction formerly granted as irregular, and the Plaintiff to issue out all Process of Contempt in Course to a Serjeant at Arms before an Injunction to issue.

Tilly contra Egerton, 12 Car. 2. fo. 170.

TH A T *Nicholas Tilly* the Plaintiff's Mortgage.

Brother being seized in Fee of Lands by Deed in 1642. mortgaged the Premises to *John Egerton* in Fee for 150*l.* with Interest, payable in 1643. and 6*l.* upon that Day annually, till 1649. and the 28th of *March* 1649, for the Payment of 108 *l.* by *Nicholas Tilly* his Executors, Administrators or Assigns; that afterwards in the Presence of *John Egerton* the Plaintiff purchased the Fee-Simple of the Premises of *Nicholas Tilly*, and paid him Part of the Purchase-Money in Hand, and gave him Security for the Residue. And in 1652. the Plaintiff agreed with the said *John Egerton* for the Redemption and the Purchase of the Premises of him, and in Satisfaction thereof the Plaintiff was to pay him 6 *l.* for ten Years, from Lady day then next, and 120 *l.* at the ten Years end, and at the ten Years end the Premises to be conveyed to the Plaintiff, and the Deeds to be delivered up, and upon the said Agreement the Deed of Mortgage and other Writings were by Consent to be delivered up to one *Collier* to draw the Agreement, and before the Agreement was drawn, the said *John Egerton* in 1653. died,

Vol. 3 - p. 63.
J. C. 155, 242.
Vol. 2. 247, 361.
1. Chanc. R. 80. 81.
29. Abr. 326. 1.
Max. 29. 19, 21.

leaving *Vincent Egerton* his Brother and Heir, and the Defendant *Julian* his Relict, and *Julian* took Administration; and that after *John Egerton's* Death, the said *Vincent* and *Julian* contested who should have the 6 *l. per Annum*; *Vincent* claiming it as Heir, and *Julian* as Administratrix, and each threatened the Plaintiff to recover the same from him again; so that ever since *John Egerton's* Death the Plaintiff is in Arrear of it; that *Vincent* died, leaving the Defendant *William* his Son and Heir, between whom and *Julian* the same dispute grew, so that to whom the 6 *l. per Annum* and Arrears this Court should adjudge it to belong, and the growing Payments, and the 120 *l.* at the ten Years end, and the Premises then to be conveyed, is the Bill.

The Defendant insists, that *Julian* exhibited her Bill against the said *Vincent Egerton* and *Nicholas Tilly*, to have the Mortgage-Money paid to her as Administratrix to *John Egerton*, but failed therein. The Defendant *Julian* claims the Mortgage-Money by the Plaintiff's Agreement with *John Egerton* as his Administratrix to enable her to pay his Debts, he not leaving Assets sufficient.

This Court, with the Assistance of the Judges, decreed the Plaintiff shall have Redemption of the mortgaged Premises

and forasmuch as the defect of Assets of the Mortgagor was not proved, This Court was of Opinion, that the Heir of the Mortgagee ought to have the Money to be paid for the Redemption of the Premises, and decreed the Arrears of the 6*l.* per Annum, and the growing Payments for the ten Years, and the 120*l.* at the ten Years end shall be paid by the Plaintiff to the Defendant William Eger-
ton.

Heir of the Mortgagor to have the Redemption Money, and not the Administrator, the defect of Assets not being proved.
*l. 2. 155, 243.
1. Cha. C. 50, 003,
206, &c.*

Williams contra Dutton, 12 Car. 2. fo. 109.

THIS Court with the Assistance of the Judges allowed the Jurisdiction of the County Palatine of Chester.

Jurisdiction of Chester.
*ante 26, 140,
post 270.*

Witchcot contra Souch, 12 Car. 2. fo. 112.

THE Time for the Sale of Lands by Trustees being elapsed, so that the Trustees have no Power to execute the Trust. This Court with the Assistance of the Judges, were of Opinion, that by the Elapse of Time, no Advantage ought to be taken, but decreed the Trustees to proceed with the Sale notwithstanding.

The Time of Sale of Lands by Trustees elapsed, yet decreed to proceed in the Sale.
*Max. 29. 57, 50,
post 203,
ante 160. &c.*

Micklethwait contra Boatman, 12 Car. 2. fo. 179.

No Interest for Rents and Profits. *See* *Horrest. 2. ac.*

THIS Court would not allow Interest for Rents and Profits.

Saunders contra Hord, 12 Car. 2. fo. 332.

Demur to a Bill for Redemption of a Mortgage because of the Antiquity, and plead the Stat. 21 Jac. good.

ante 109, 110.

THE Plaintiff seeks a Redemption of a Mortgage as Heir and Administrator of the Mortgagor; the Defendant demurs for that he ought not to be troubled or questioned for any Matters in the Bill, in regard of the Antiquity of the Transactions, they being not privy or Parties, the Matters being acted in 38 Eliz. and pleaded that the Plaintiff hath not made any Entry in 20 Years, and is barred by the Statute 21 Jac. the Plaintiff claiming as Heir to his said Father, and pleaded also a Fine and Recovery suffered by the said Father in 3 and 15 Jac. This Court allowed both the Plea and Demurrer.

Power to Lease

Pollard contra Dominam Greenvil, 12 Car. 2. fo. 429.

s.c. in Chancery Cases 10.

3. V. 156.

29. Abr. 342. &c.

THAT one George Cuttifold in 1631. became bound in a Bond of 200 l. for Payment of 104 l. which Money was

im.

employed for the Use of the Defendant Dame *Greenvil* during her Widowhood, and she in *December* 1673. in Pursuance of a Power reserved to her by the Deed of Settlement of her Estate before her Marriage with Sir *Richard Greenvil* to make Leases for three Lives or 21 Years of any part of her said Estate, she in Consideration of several Debts, as also of the said Bond of 200 *l.* demised to the said *Cuttiford*, his Executors, &c. the Premises for 21 Years to commence from and after the 25th of *March* then next ensuing, for saving harmless the said *Cuttiford*, his Heirs, &c. from the said Bond.

The Defendant Dame *Greenvil* insisted, That the Power reserved to her was only to make a Lease or Leases in Possession, and the Lease made by her to *Cuttiford* was to commence from a Time to come, so that the same was void in Law, and that if the Lease were good, yet she received the Profits during Coverture, and so not accountable for them.

This Court was assisted with the Judges, and it appearing that the Debt now in Question was taken up and employed for the Use of the Defendant Dame *Greenvil*, who created the Trust for the Payment of her Debts, and she by Virtue of the Power reserved to her before Marriage, received the Profits of the Premises

Power to
make Leases
not strictly
pursued, yet
being in
Trust to pay
Debts of the
Party crea-
ting the
Trust, it shall
be applied to
that purpose.

mises; and although the Lease granted to *Cuttiford* may not in Strictness of Law be a good Lease, yet this Court was satisfied that the same doth amount to a good Declaration of her Power in Equity to make a Lease for 21 Years in being, and that her Reception of the Profits was under that Power, and subject to the Trust, and decreed that the said Debt in Question be paid to the Plaintiff, and in respect the principal Debt and Damages doth surmount the Penalty of the Bond, it was also decreed that the Defendant should pay 20*l.*

*Lapworth contra Smith, 12 Car. 2.
fo. 11, 471, 738, 883.*

N.B. Redemption
by the Heir.
*this is now otherwise
settled. 2. ante 164*

THIS Court decreed the Heir to have the Redemption of the Premises and not the Administrator.

Russel contra Bodvil, 12 Car. 2. fo. 38.

THE Plaintiff moves for a Commission to the Sheriff to put the Plaintiff and his Sequestrators in possession.

The Defendants insist, that the Commission desired is to execute Orders for Alimony, for which there is now no Jurisdiction in this Court, and there is now no Law in being to support any such Decree; and if there were, there is no Decree

*Alimony
ante 44, 164.
post 224.*

Decree signed and inrolled ; and a Sequestration, Injunction and Commission are not grantable but on a Decree signed and inrolled, and are not to extend to an Agent of a Sequestrator, nor the Commission to the Sheriff is awardable before one first to the Justices.

This Court being assisted with the Judges on this Point, whether the Act for judicial Proceedings did revive and maintain the Decree made for Alimony in this Cause or not.

The Act for judicial Proceedings did revive a Decree for Alimony. *post 224.*

His Lordship after hearing of the learned Arguments on both Sides, declared, That inasmuch as the Decree made in this Cause doth depend on his Lordship's Judgment, his Lordship referred it to several of the Judges upon the Arguments.

The Plaintiff moved for a Writ of Assistance to put the Plaintiff's Sequestrators in Possession of the Lands decreed, the said Decree being certified to be a good Decree

His Lordship declared, That he doth conceive the Decree to be in Force, and leaves the Plaintiff to proceed thereupon as upon other Decrees.

The Defendant sued out all Process to a Serjeant at Arms, whereon a Sequestration issued, and Injunction to Commissioners.

This

A Commis-
sion to the
Sheriff to put
the Plaintiff's
Sequestrators
in Possession.

This Court ordered a Commission to the Sheriff to put the Plaintiff's Sequestrators into Possession.

ante 170, 100, 106.

Underhil cont. *Whitchot*, 12 Car. 2. fo. 460.

Injunction
for Possession.

ante & supra

THE Defendant being in Contempt for not performing a Decree to an Attachment, an Injunction for Possession was awarded.

Plumpton contra Plumpton, 12 Car. 2.
fo. 186.

Will.

200 l. devi-
sed to two of
the Children
of J. S. be-
gotten or
hereafter to
be begotten,
one was born
at the Time
of the said
Will she shall
have 100 l.

THAT *Henry Plumpton* the Plaintiff's late Grandfather deceased being seised in Fee of Lands and of a personal Estate in 1638. made his Will, and his eldest Son *Andrew Plumpton* the Defendant, Executor, whereby he devised to two of the Children of *Henry Plumpton*, his younger Son, (the Plaintiff's Father) either already begotten, or which hereafter shall be lawfully begotten on the Body of *Christian* his then Wife, 100 l. apiece to each of them to be paid unto them at their several Ages of 21 Years or Days of Marriage which should first happen, and after died; and at the Time of the said Will the Plaintiff was the eldest Daughter of the said *Hen. Plumpton* the younger in the Will named, and is of the Age of

21, and so is intituled to have the said 100 l. and Damages as aforesaid.

The Defendant insists that the said Legacy belongs to the Plaintiff's younger Sisters, who were born since the Testator's death, and insists, that if the Testator had intended 100 l. Part of the said 200 l. Legacy to the Plaintiff, he would have named her in the Will, in regard she was the Daughter of the said *Henry* and *Christian*, and born before the making of the said Will, and therefore supposeth the Intent of the Testator was to leave the disposing thereof to the said Defendant, to the end he might dispose thereof at his Discretion to such of the Children of the said *Henry* and *Christian* his Wife, as were most deserving, and that by the Words of the said Will, the Children that were afterwards begotten between *Henry* and *Christian* should be equally concerned with the Plaintiff, who hath a Brother and Sister since born of the said *Christian*, who may claim the same of this Defendant, they having as much Right and Interest in the same as the Plaintiff; and the Defendant conceived he is equally obliged to pay them the said Legacy.

This Court declared that the Plaintiff is a Person by the Will capable to take and demand the said Legacy of 100 l. and decreed the said 100 l. Part of the said

said 200 *l.* Legacy so given by the said Will as aforesaid, to be paid by the Defendant to the Plaintiff, the Plaintiff being of Age and in a Capacity to claim the same; and this Court further declared the said 100 *l.* Legacy doth wholly belong to the Plaintiff by the said Will, and that by the Words of the said Will none of the other Children of the said *Henry* and *Christian* can claim the said Legacy of 100 *l.* so given to the said Plaintiff.

Philips contra Hele, 12 Car. 2. fo. 182.

THAT *John Philips* being seized in Fee-Simple of the Premises, did by Deed in December 1654. for 60 *l.* mortgage the same to *Elizabeth Knowling* with a Proviso, that if the said *John Philips*, his Heirs or Assigns, should pay to her, her Executors or Assigns in three Years after the said Deed the said 60 *l.* with Interest, then the Deed to be void; and in December 1655. the said *John Philips* in respect of the Disobedience of his Daughter *Joan* the Defendant, and for the continuance of his Lands in his own Name and Blood, did by Will devise the said Premises to the Plaintiff in these Words (*viz.*) *All the rest of my Goods, Chattels and Lands I give and bequeath to Ralph Philips the younger, to discharge all Things charged*

Will. *limited.*
ante p. 250,
207.
By what
Words a Fee
Simple passeth in a
Will.

charged in my Will, whom I make my whole and sole Executor; which Will was published in the Presence of the Defendant *Joan*; so the Plaintiff as Devisee of the said *John Philips* of the said Lands, exhibited this Bill for the Redemption of the Premises.

But the Defendant *Will. Hele* in Right of the said *Joan* his Wife, claiming the inheritance of the Premises and the Equity of Redemption as Heir of the said *John Philips*, and a Verdict at Law being found for the Plaintiff on a *Deviseavit vel non deviseavit*.

The Defendant insists, that the Right of the Premises and of the Redemption was in the Heir at Law notwithstanding the Devise was only in Case of Defect of a personal Estate to satisfy all the Testator's Debts and Legacies, because the Devise doth not import a Fee-Simple Estate, but only for Life of the Devisee.

This Court ordered a Case to be made and to be referred to Baron *Turner*, who certified and declared his Opinion, that according to the Devise the Lands ought to continue with the Plaintiff and his Heirs both in Law and Equity, and that without any kind of Trust whatsoever, and that the Plaintiff hath Right to redeem the Mortgage, and not the Heir, which this Court decreed accordingly.

Devisee decreed to redeem the Premises, and not the Heir at Law.

Bingham

Bingham cont. *Hussey*, 12 Car. 2. fo. 170.

T *Thomas Hussey* settles by Deed 22 Car. 1. on *Delaline Hussey* his Son in Consideration of 600*l.* Portion with the Wife of *Delaline*, and covenanted to levy a Fine; and afterwards in 1655. the Defendant procured him to make another Settlement contrary to the former, and left out the Limitation to the Heirs Males, and levied a Fine thereof.

Two Deeds of Settlement, the latter contrary to the former, the first decreed to stand against a Fine levied to the Use of the last.

ante 173. &c.

This Court upon the Proofs of the first Agreement decreed the latter Deed and Fine to be void and set aside, and the Premises to be enjoyed according to the first Deed, as if a Fine had been levied.

Domina Howard contra Com. *Suffolk*,
12 Car. 2. fo. 372.

T H A T the Earl of *Suffolk* being by Decree to pay the Lady *Howard* the Arrears of an Annuity, and having some Furniture and other Moveables at *Bruges* in *Flanders*, commenced Suits in those Parts, and arrested and seized the same there, which is expressly against the Laws, Rights, Usages and Customs of *England*; which Suits and Process by means of a Letter from the King of *England* were transmitted thence hither to be

be determined here, and the Proceedings in *Flanders* appeared to be grounded only on the Decree here.

That Court taking the Matter into consideration, declared and pronounced, that by the Laws, Rights and Course of Justice in *England*, the said Decree made against the Earl of *Suffolk*, notwithstanding any Contempt thereof, doth not charge or bind his Goods or Moveables, but his Person only; nor could they be attach'd or seized by the Decree, and discharged the Arrest and Seizure, and ordered this his Judgment to be put into *Latin*, and exemplified under the Great Seal of *England*.

By the Laws of *England*, a Decree, (notwithstanding any contempt thereof) shall not bind the Goods or Moveables, but only charge the Person.

see 4. Notes on 4. Jurisdiction of 4. Co. of Chanc. Star - see proctor

Cornel cont. Sykes, 12 Car, 2. fo. 465.

THAT *Alice Cornel* the Plaintiff's Mother, whose Heir the Plaintiff is, being seized to her and her Heirs, according to the Custom of the Manor, of Copyhold Lands, she and her Husband and *Paul Cornel* in the Year 1635, mortgaged the Premises by Surrender to Dr. *Mountford* for 30 l. and for Non-payment thereof the Premises were forfeited, and the said Dr. *Mountford* took possession and disposed of the Premises to *Joan* his Wife for Life, the Reversion to the Defendant *Mary* and her Heirs, and the said

ante 105.

O

Alice

Alice Cornel lately died, her Husband being living, and leaving the Plaintiff her Son and Heir, she not being able to redeem during her Coverture, and since the Premises are conveyed to one *Holland*, so the Bill is for the Plaintiff to redeem.

Redemption
of a Mortgage decreed
to the Heir
after forfeiture and Sale
for a long
Time past
by Reason of
impediment
during the
Coverture of
his Mother.

The Defendant insisted that the Plaintiff ought not to redeem, being so long since, and that the said Defendant *Mary* had conveyed away the Premises to the Defendant *Holland*.

This Court being satisfied, that in regard of the Impediment in the Plaintiff's Mother to redeem, during her Coverture, the Plaintiff ought to redeem, and decreed accordingly.

1722-23

Emerson cont. Dallison, 12 Car. 2. f. 30.

Bill of Review

THE Plaintiff having inserted into his Bill Scandal against the Defendant *Mr. Ramorth*, which was referred to a Master to tax Costs for such Scandal, and the said Master taxed 100 *l.* Costs for the Defendant *Mr. Ramorth* in respect thereof.

Costs taxed
for a Scandalous Bill to
be paid by
the Plaintiff,
and 5 *l.* by
the Counselor whose
Hand was
to it.

His Lordship with the Judges declared that the said Scandal was very great, yet nevertheless ordered that the said Costs be reduced to 50 *l.* to be paid by the said Plaintiff unto the said *Ramorth*, and also 5 *l.* more to be paid by *Mr. Welcome* whose

whose Hand was set to the Bill, and the Plaintiff insisted that the Costs were pardoned by the Act of Indemnity; but his Lordship with the Judges were of Opinion they were not.

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Colwall cont. Child, 12 Car. 2. fo. 590.

J. C. 1. Ch. C. 1. 16.

THIS Case is on a Bill of Review. The Bill sets forth that the former Causes being heard in 1653, the Court proposed a Reference of the Matter to Arbitration, and the Defendant Dr. Child, and the Solicitor for the Testator, William Child, submitted thereunto; whereupon the Court ordered the Differences should be referred to Serjeant Mainard, in case the Testator then living at Worcester, should in Writing under his Hand and Seal, signifie his Consent to be bound by the said Serjeant Mainard's Award, without Appeal, which the Testator did do, if the Award were made within a Fortnight after the End of that Hilary Term, which Reference became fruitless. And in Trin. 1654. the Court again renewed the said Arbitration, provided the Award was made within three Weeks after the end of that Term, which was consented unto by the said Dr. Child, and the Solicitor for the said Testator then present in Court, and Ordered accordingly,

Bill of Review. — Awarded.
1 Chancery
Cases, 86.

*1. Jalk. 70. 1. Ro.
Nov. 26. 16. 1653.
March 11. 1654.
35. 3. Lev. 17.
2. M.D. 227.
2. 1. Vern. 259.
Vol. 3. 76.
Post 190.*

ly, and an Award made in pursuance of both the said Orders, and confirmed by a Decree signed and inrolled, which Decree the Plaintiff insists is erroneous, for that the Consent of the Solicitor is not binding in such Case, having no Power from the Party to consent thereunto.

The Defendant Dr. *Child* insists that the said Testator's Solicitor attended the Serjeant with Council and took a Copy of the Award as soon as the same was published; and in all the Time before the said Award decreed, the said Solicitor or Council never mentioned any dissent of the said Testator at all.

Decree reversed.

The Plaintiff insisted that the said second Reference was intended to report and certify, and finally to end, and that the said Testator's Solicitor was forced into the said Reference, being then accused to be an Incendiary between the Father and Son.

This Court upon these and other Errors reversed the said Decree.

Davenport contra Longueville, 12 Car. 2.
fo. 389.

Bond of Covenants.

post 201.

THIS Cause is on a Case stated (*viz.*) That in 1639, the Defendants Sir *Edward Longueville* and *John Pollard* became bound with Sir *Peter Temple*, and for

for his Debt to the Plaintiff in a Bond of 300*l.* for the Payment of 250*l.* which Bond the Plaintiff sued, and in 1646. got Judgment against the Defendant *Pollard*; and in *Trin.* 1658, got another Judgment against Sir *Peter Temple* on the same Bond, and in the same Term got a Judgment against the Defendant Sir *Edward Longueville*, and the Plaintiff extended their Lands; and in 1647, *Pollard* paid the Plaintiff 100*l.* and in 1652, Sir *Edward Longueville* being under an Arrest, secured to the Plaintiff 500*l.* and it was then agreed, and the Plaintiff covenanted by Articles between him and the said Sir *Edward Longueville*, that the said Sir *Edward* paying the said 500*l.* and the other Damages and Costs sustained by Reason of the said Judgments against Sir *Peter Temple* and *Pollard*, and the Execution done thereupon being satisfied that he would assign to the said Sir *Edw.* the said Judgments and Extents thereon; That in *Novemb.* 1652. a Treaty was between the Plaintiff and Sir *Peter Temple* and *Pollard*, when the Plaintiff owned he had received the 100*l.* from *Pollard*, and that the 500*l.* was secured by the said Sir *Edw. Longueville* as aforesaid, and that there was 60*l.* more secured to the Plaintiff in discharge of the said Judgments; whereupon a Writing relating to discharge

of all the said Judgments was sealed and delivered by the Plaintiff, and afterwards the Plaintiff assigned the said Judgments to the Defendant *Thomas Longueville* in Trust for the said Sir *Edward*, and Covenants that he neither had or would hinder, stay, impeach, release, discharge, determin, bar or avoid them or either of them, and enters into a Bond of 500 l. for the performance of the said Covenants; and *Longueville* brings an Ejectment in the Plaintiff's Name on the Extent had against *Pollard's* Lands, whereupon *Pollard* brought an *Audita Querela* against the Plaintiff, and declared upon the aforesaid Writing sealed by the Plaintiff, and the Plaintiff pleaded *Non est factum*, whereupon a Verdict passed for *Pollard*, and afterwards put the said 500 l. Bond in Suit against the Plaintiff; to be relieved against which, and to set aside the said release of the said Judgments, is the Bill.

Audita Querela.

See Curr. Case.

This Court thought not fit to relieve the Plaintiff, but dismiss the Bill.

The Plaintiff afterwards exhibits his Bill of Review to reverse the said Dismission.

Bill of Review.

ante 195. l. 3. 95.

And the Plaintiff insisted for Error, that the Bill is to be relieved against the 500 l. Bond, which is for the performance of Covenants, and the Damnification thereupon

upon is considerable, yet the whole Penalty thereof will be recovered against the Plaintiff, whereas by the Course of this Court the Defendant ought to have no more than he is really damnified, and shall recover upon an Action of Covenant at Law, besides what the said Defendant shall make appear to be damnified he hath an Equity to be re-imburst for the same out of the Estates of *Sir Peter Temple* and *Pollard*, as if such Note by the said *Davenport* had never been made.

The Defendant insisted that the Defendant *Sir Edward Longueville* doth swear that he is damnified above the Penalty of the said Bond 400 *l.* at least, and the Defendant being so damnified, this Court doth not in such Cases direct any Tryal, but dismiss the Plaintiff's Bill.

This Court conceived the said Decree of Dismission to be just and no Error therein, and decreed the said Dismission do stand confirmed, and dismiss the Bill of Review.

Pile contra Dominam Pile, 13 Car. 2.
fo. 61.

THE Testator giveth 3000 *l.* apiece to Daughters by Marriage Settlement, and afterwards cuts off the Entail of his Estate, and by his Will gives the same

On Bond of Covenants, the Party to have no more than he is really damnified, and shall recover in a Tryal at Law.

same Daughters 3000 *l.* apiece, the Plaintiff, the Heir, insists that the Marriage Settlement and Will make but one Settlement, and the 3000 *l.* in both is but one 3000 *l.*

3000 *l.* given
by a Marriage Settlement, and
3000 *l.* given
to the same
Party by
Will, by
Circumstances adjudged
to be 6000 *l.*

This Court with the Assistance of the Judges (it appearing by Proof that the Testator declared after the Marriage Settlement that he would add to his Daughters Portions) were of Opinion and declared he cut off the Entail on purpose to add to the Portions; and that the said 3000 *l.* in the Marriage Settlement, and the said 3000 *l.* in the Will made 6000 *l.* apiece, and they could not expound the Deeds and Will otherwise, and so dismiss the Plaintiff's Bill.

Mompesson cont. Drew, 13 Car. 2. f. 346.

THAT Sir *Thomas Drew* being to renew a Lease with the Dean and Chapter of *Exon* by his Deed 9 *Car. 1.* whereunto the former Lessees and Trustees were Parties, covenanted and declared that the said Trustees and such Persons in whose Name such Estate was or should be received, should stand seized or possessed thereof for the said Sir *Thomas* and his Lady, during their Lives, and after their decease to *William* his Son, and *Eliz.* his Wife for their lives, and after to the Heirs

Heirs Males of the Body of the said *William*, and for default thereof to such Person or Persons as the said *Sir Thomas* should by Will or any other Writing nominate or appoint; that *William* died without Issue.

This Court declared that the said Remainder for default of Heirs Males of *William*, to such Persons as *Sir Thomas* should appoint in the said Deed of 9 *Car. 1.* was a void Remainder in Law, and that there can be no entail of a Chattel, and the Limitation to the said *William*, and the Heirs Males of his Body doth vest the intire Trust of the remaining Term, and the disposition thereof in Equity in and upon him, so that the Premises do in right belong to his Executrix.

Limitation of a Lease in Tail, the Remainder over void, and the Remainder-Man not relieved here.

29. *Feb.* 359.
360. *He.*
ante 11.

Wake cont. Calley, 13 Car. 2. fo. 395.

A Bond of 1600 *l.* penalty entred into 19 *Jac.* to perform Covenants in an Indenture, the Covenantors to pay 77 *l.* per Annum, till 1100 *l.* be paid but the Covenants not being performed, the Plaintiff sues the Bond against the Heir of the Obligor.

Bond of Covenants sued against the Heir. *ante 196.*

See 2. P. Wms 191.

This Court declared that the 1100 *l.* and Interest thereupon ought to be paid, and by the consent of the Parties, ordered and decreed, that the 1600 *l.* the penalty

penalty of the said Bond be paid by the said Defendant to the Plaintiff in full of all the Principal and Interest, and 40 *l.* Costs.

Tibbotts contra Hurst, 13 Car. 2. fo. 429, 629.

Lands surrendered to the Use of a Will.

THAT *Barnabas Hurst* Husband of the Defendant *Katherine Sen.* died indebted to the Plaintiff in 30 *l.* and to others, and intending to pay all his Debts in Nov. 1659, surrendered his Messuage called the *Woolfac*, to the Use of his Will, and the same Day made his Will, whereby he devised the said Messuage to the said *Katherine* his Wife, and gave to the Defendant *Katherine Jun.* his Daughter, 30 *l.* to be paid within a Year after the other Defendant *Katherine* her Mother's Marriage, and 20 *l.* more at her Mother's Death, and made the said *Katherine* his Wife his Executrix, and she to pay all Debts which he owed, and died, leaving *Katherine Jun.* his sole Daughter and Heir, and the Defendant *Katherine*, the Executrix, intending to preserve the said Messuage to herself for Life, and afterwards to *Katherine, Jun.* she pretends that she is not liable to pay her Testator's Debts farther then she hath Assets of his personal Estate, and combining

binning with the other Defendant *Katherine Jun.* who claims the said Copyhold Premises by descent, as Heir to her Father at least after her Mother's Death; the Executrix doth refuse to sell the Premises to pay the Testator's Debts, insisting that she is not impowred by the Will in exprefs Words; and that both before and after the said Will and Surrender, the Testator declared his intent was, That his Wife by sale of the Premises should raise Money for the Payment of his Debts.

The Defendant *Katherine Jun.* says, That she claims the Premises as Heir to her Father from his Death, and hopes to enjoy the same accordingly, if her Father did not legally dispose thereof.

This Court referred the Case to the Judges, to certifie what Estate the said Relict or Infant hath in the said Copyhold Messuage and Lands (as the Will is) and whether the said Relict may sell the same.

The Judges are of Opinion, That the Defendant *Katherine* the Elder, by the said Will, hath an Estate of Fee-simple in the Messuage and Tenement, and may dispose thereof accordingly.

This Court thereupon decreed the Defendant *Katherine* the Elder, shall sell for the best price the said Messuage for the Pay-

Estate in Fee
pass by the
Words of a
Will.

Lands decreed to be sold to pay Debts, tho' the Words in the Will for that purpose are not express.

Payment of the Plaintiff's Debts, and also other the just Debts of the Testator, and the Purchaser to enjoy against her, and the Defendant *Katherine, Jun.* the Infant and her Heirs; the Infant when come of Age shall join in, or confirm the Sale.

Wood contra Caley, 13 Car. 2. fo. 430.

Will.

ante 6, 7, 24, 25, 43, 77, 103, 107, 190, 100, 250, 207, &c. 29. Abr. 402, 403.

The Will is, the personal Estate to raise Money and purchase Land for *A.* *A.* died without Issue, the Land not purchased; decreed, the Administrator of *A.* shall have the Money out of the Hands of the Executor.

THAT *William Bourne* by his Will gave *Anne Wood* the Plaintiff's Daughter, and his Grand-child, all his Debts, Credits and Cattle, to be employed for the Infant's best Benefit, and the Executor to sell the same, and with the Money to purchase Lands therewith for the Use of the said *Anne* and her Heirs; and if she died before sixteen, or without Issue, then her Heir should within one Year after her decease pay unto the Defendant *Caley*, and to *Dorothy Bywood* 10 l. a-piece, and made *Thomas Caley* the Defendant's Father Executor, that the said *Anne* died without Issue before any Lands were purchased by the Executor though he had sold, and the Money lying by him, and after that refused to purchase, and the Administration of *Anne* being granted to the Plaintiff, he was thereby intituled to the Goods of the Testator *Bourne*, which were given to the said

said *Anne*; but the said Executor of *Bourne* insisted, that they belonged to him as Executor of *Bourne*, the Infant being dead, and the Money not bestowed in Land.

This Court decreed the Defendant the Executor of *Bourne* to come to an account with the Plaintiff, for the Testator's personal Estate, and to pay it to the Plaintiff with Interest.

Craddock cont. *Marsh*, 13 *Car.* 2. fo. 346.

THE Plaintiff moved this Court, that the Statute of Limitations may not be made Use of at Law, in Bar to any Action that shall be brought touching the Matter in question, in Case the Time limited by the said Statute elapsed since the Plaintiff's Bill was exhibited into this Court, this being the Point in Controversy.

Statute of
Limitations
pleaded. *ante* 76,
125. &c.
post 214.
Vol. 3. p. 97.
29. *Apr.* 303, 304

The Defendant insisted, that upon hearing this Cause upon Precedents produced by the Plaintiff, touching this Point, before Mr. Justice *Hide*, 28 July 1660, who not being satisfied therewith, declared he saw no Cause to give the Plaintiff relief, and that if any Person shall bring a Bill into this Court, and upon hearing of the Cause the same shall be dismissed; it is as much as if he had not brought

This Court
will not fore-
close one
to Plead at
Law to
Action to be
brought.

brought any Bill at all, and so by Course of the Court, ought not to be relieved in this Court. As to this Point,

This Court with the Judges, declared and ordered, That since upon the hearing of this Cause the Court then saw no Cause to relieve the Plaintiff, that the Plaintiff's Bill be dismissed out of this Court, and that the said Defendant shall not be debarred from pleading any Plea to any Action at Law hereafter to be brought by the Plaintiff against the Defendant for the Matters in question.

Clapham cont. Bonjer, 13 Car. 2. fo. 337.

Mortgage.
ante 40, 106.
29. Apr. 306.
Vol. 2. 106, 100,
120.

A Mortgage not being relieved after Twenty Years Forfeiture, and the Estate descending to an Heir, and he sells the same, all this pleaded and held good.

Shelley cont. Dominam Earsfield, 13 Car. 2. fo. 571.

Settle^{me} cont.
192-330, 147, 163,
173, 277.

THIS is on a Case stated, and the Judges Resolutions thereon; the Case is, (*viz.*)

That Sir Thomas Earsfield on the 19 Aug. 1633, being seized in Fee of divers Manors in Kent and Sussex for 5 s. paid, sells all his Manors and Lands to Sir Robert

Napper

Napper; Sir Thomas Middleton, Sir Richard Napper, and Thomas Middleton Esq; for six Months.

Sir Thomas Earsfield on the 20 Aug. 1653, releaseth to them and their Heirs to the Uses following.

1. To the Use of Sir Thomas for Life without impeachment of Waste.
2. To the Heirs of Sir Thomas lawfully begotten, and for want of such Issue, &c.
3. The Remainder of all (except one Mesuage or Tenement in the occupation of John Hill) to the said Lady Christian Earsfield for Life; as for Hill's Tenement to the Use of Ashton Earsfield, Brother of the said Sir Thomas, for 99 Years if he lives so long,
4. The Remainder of all the Premises limited to Dame Christian for Life, then to the Use of Ashton Earsfield for 99 Years if he so long live, and after the determination of the several Estates limited to Ashton Earsfield,
5. To Robert Napper, Sir Thomas Middleton, Sir Richard Napper and Thomas Middleton, and their Heirs, during the life of Ashton Earsfield.
6. Remainder to the first Son of Ashton, and the Heirs Males of his Body, and so to every other Son of the said Ashton.
7. Re-

7. Remainder to the Use of *John Earsfield*, Son of *Sir Thomas Earsfield*, late of *Hollington*, deceased, and the Heirs Males of his Body, with Remainders over.

Provided nevertheless, that after the Death of the said *Sir Thomas* and Dame *Christian* all the said recited Manors and Lands shall stand charged with the Payment of 100 *l. per Annum* to *Bridget Shelley, &c.* during the Life of the said *Bridget*, and also with the Payment of 50 *l. per Annum* to *Grace White* for her Life, provided that if either of them be not paid in twenty Days, then the said *Bridget* and *Grace*, to distrain till Payment, and to this farther use, that if the said *Ashton Earsfield* should die without Issue Male of his Body, then the said Lands shall stand charged with the Payment of 4000 *l.* to the said *Bridget Shelley*, and her Children, (*viz.*) 2000 *l.* to the said *Bridget* to be disposed of as the said *Bridget* should appoint, and 2000 *l.* residue to such eldest Son of the said *Bridget* as shall be living at the Death of the said *Ashton Earsfield*, without Issue Male of his Body.

The like Proviso of 1000 *l.* to the said *Grace White*, and her Children, but if she die without Children, that then the said 1000 *l.* to be paid to the eldest Son

of the said *Bridget* which shall be living at *Grace's* Death, and therefore the said *Grace* to give security to repay the said 1000 *l.* to the said *Bridget's* Children, in case *Grace* die without Issue.

The said several Sums of 4000 *l.* and 1000 *l.* to be paid within three Years after the Death of the said *Ashton*, and in the mean Time *Bridget* and *Grace*, and their Children to have the ordinary Interest of the said several Sums paid to them out of the said Lands, with a Power of Revocation in the said Deed, to the said *Sir Thomas*, to alter any of the Uses, or wholly to make void the Deed.

Sir Thomas died in 1653, *Ashton Earsfield* died 18 June, 1654, without Issue Male, *Dame Christian* died 4 March, 1659.

That *Sir Thomas* had three Sisters, (*viz.*) *Timothea Brown*, *Bridget Shelley*, and *Grace White*.

William Shelley, the eldest Son of the said *Bridget*, survived *Ashton Earsfield*, and made *Bridget* his Mother his Executrix, and died before *Dame Christian*.

That *Timothy Shelley* was the eldest Son of *Bridget* at the Death of *Dame Christian*.

That the Defendant *John Earsfield* within a fortnight after the Death of *Dame Christian* entred into all the Lands.

Reports in Chancery.

The Estate is now let at 662 *l. per Annum*, but was formerly reputed worth 800 *l. per Annum*; but *Abbot's Marsh* being near the Sea, is subject to great Charges.

That one third Part of the said Lands is claimed by *Ambrose Brown*, Son of the said *Timothea*, who was one of the Sisters and Co-heirs of the said *Sir Tho. Earsfield*.

The Lands of 662 *l. per Annum* are claimed by *Elizabeth* and *Mary Goring*, Daughter of *Sir Thomas Earsfield*, Father of the said *Sir Thomas* by his first Wife, as Co-heirs of *Herbert Earsfield*, eldest Son of *Sir Thomas* the Father.

The Rent of *Hill's Farm* let at 58 *l. per Annum* for ten Years yet to come, is only reserved to *Sir Thomas*, his Executors, &c. during the Term, and the Word (Heirs) omitted, and the Title thereof questioned by *Brown* and *White*, as if the said Farm were not well conveyed to the Defendant *John Earsfield*.

That the Mansion House called *Denn Place*, and the Farm Houses were much out of repair at the Death of the Lady *Earsfield*, and the Repairs thereof will cost 500 *l.*

The Points in question are.

1. Whether the 5000 *l.* be charged on the Estate either in Law or Equity?

2. If it be, then when the Payment of the Interest of the said 5000 *l.* must begin, whether from the Death of *Ashton Earsfield*, or the Lady *Earsfield*, and how the 5000 *l.* must be paid?

3. Whether the Annuities of the said 100 *l. per Annum*, and 50 *l. per Annum*, appointed to *Bridget Shelley*, and *Grace White* shall continue after the Payment of the Interest Money begins for the said 5000 *l.*?

4. Who shall be at the Charge of the Repairs of the said Mansion and Farm Houses, all being very ruinous at the Death of the said Lady?

5. Who shall be at the Charges of the Suits concerning *Hill's Farm* which is with-held from the Defendant *Earsfield*, and concerning *Worth* let at 166 *l. per Annum* claimed by *Mr. Goring*, and the Rents thereof detained from the said Defendant?

6. How the Interest of the said 5000 *l.* shall be paid whilst the Rents of *Hill's Farm* and *Worth* are claimed as aforesaid, the same being near one half of the Lands limited to the Defendant *Earsfield*?

7. To whom the 2000 *l.* claimed by the Suit as Executrix to *William Shelley* ought to be paid, whether to the Executrix of the said *William Shelley*, who was the eldest Son of the said *Bridget* at the Death of *Ashton*, or to *Timothy Shelley* who was the eldest Son at the Death of the said Lady *Earsfield*?

The Defendant *Earsfield* is but sixteen Years old.

The Court taking these Questions to be of great weight, ordered the Case to be delivered to the Judges for their Opinions therein, both for Law and Equity.

The Judges having considered the Case and Points, have certified, (*viz.*) We have taken this Case, and the several Questions thereupon into consideration, and are of Opinion.

1. That the 5000 *l.* is well charged upon the Estate in Equity.

The payment of Interest when to begin.

2. That the 5000 *l.* ought not to be paid till the Death of the Lady *Earsfield*, and therefore no Interest is to be paid for it but from her Death, from which Time it becometh due.

Annuities to continue, the other Monies charged upon the Lands accrew.

3. That the Annuities of 100 *l.* and 50 *l. per Annum* have no dependance or relation to the payment of the 5000 *l.* and therefore ought still to continue to be

be paid during the respective lives of the said *Bridget* and *Grace*, without any abatement of the 5000*l.* or of the Interest for the same.

4. That there ought not to be any allowance or abatement out of the 5000*l.* or Annuities, or Interest towards the Repairs of the Houses, but the same are to be done at the Charges of the present Owner.

5. That the Defendant *Earsfield* who is solely concerned in the Suits, is to bear the Charges of such as he shall commence, or as shall be brought concerning the said Lands.

6. That the whole Interest of the 5000*l.* ought to be paid from the Time that it was due, notwithstanding any claim made to Part of the Lands upon which it stands charged.

7. That the 2000*l.* appointed to be paid to the eldest Son of *Bridget* that should be living at the Death of *Ashton* without Issue Male, ought to be paid to *Bridget* as Executrix to *William Shelley* her eldest Son then living.

8. That the Limitation in the Deed to the Use of the Heirs of Sir *Thomas Earsfield* lawfully begotten, and to be begotten; and for want of such Issue, &c. is a good Limitation to create an

Repair.

Charge of Suits.

Interest of Money charged on Land to be paid, notwithstanding claim to Part of the Land.

A good Limitation to create an Estate Tail.

Estate Tail in Sir *Thomas Earsfield*, and
the Heirs of his Body.

Foster,
Bridgman and
Hales.

This Court confirmed the Judges Certificate.

Hurdret cont. *Calladon*, 13 Car. 2. f, 446.

THE Bill is to have an Account from the Defendant of Mony and Goods, for which the Defendant insists the Plaintiff hath Remedy at Law.

The Plaintiff insists, that by Reason of the efflux of Time, the Defendant would plead the Statute of Limitations, which at the Time of the Bill exhibited into this Court, the Defendant could not do, the Plaintiff being then within the Time of the said Statute, and the Plaintiff cannot go to Law without the direction of this Court, that the Statute should not be given in Evidence.

Bill that no
advantage
should be
taken of the
Statute of
Limitations
dismissed.

This Court ordered Precedents to be searched for where the Court hath ordered that no Advantage should be taken of the Statute of Limitations of personal Actions, in Cases where the Suit had been begun here, and the Time had been effluxed pending the Suit.

This

This Court upon Precedents, and rehearing the Cause, dismiss the Plaintiff's Bill.

Norton cont. Boneft, 13 Car. 2. fo. 478.

THE Bill is to be relieved for 700 *l.* and the proceed thereof lent by *Thomas Boneft* the Testator to *Robert Hanscombe* upon a Mortgage of Lands by a Lease of 99 Years, which the said Testator took the Security in the Defendant *Thomas Boneft*, and afterwards by his Will devised several Legacies, and devised all the rest of his personal Estate to the Plaintiff whom he made Executor, and that the said Mortgage was taken in the Defendant's Name in Trust, for the Testator, and the Plaintiff insists that the said *Boneft* ought to assign the trust to the Plaintiff.

But the Defendant insists, that the Testator intended, that in Case the said Mony on the Mortgage were not paid in, in his life-time, that the said Defendant *Boneft* should have it, and that the Testator took no Declaration, or other Writing of the Trust from the Defendant, or desired any.

The Master of the *Rolls* would not relieve the Plaintiff, but dismiss the Bill, But the Lord Chancellor assisted with

Voluntary
Intention
shall not dis-
charge a
Trust, and a
Devise there-
of not to be
controlled by
it.

the Lord Chief Justice of *England* declared, That notwithstanding the intention of the Testator, yet there being no more declared than an Intention which is voluntary and ambulatory, and never put into Action, and the Estate in Law which the Defendant claims, being settled upon a Trust, the same Trust is not discharged by any Words of an Intention, but that the Estate remains upon the first Foundation, which was the Trust, which is deviseable by the Will, which being made above three Years after the declaration of any Intention, under which the Defendant claims, and the Testator having by the said Will given the Defendant another Estate, and devised all his Estate, not before given, unto the Plaintiff, and the Defendant not proving that the Testator renewed his Intention after the Will made, therefore this Court is of Opinion, that the Trust is devised to the Plaintiff by the Will, and that there is just Cause to relieve the Plaintiff, and decreed the Defendant to assign the said Trust to the Plaintiff.

Maynel

Meynel & Sterling cont. *Cooper*, 13 Car. 2.
fo. 677, 694.

THAT *Richard Conquest* being arrested and imprisoned at the Suit of one *Cooper* upon mean Process, and after made an Escape, who upon a fresh pursuit, being retaken, is in Custody again; but the said *Conquest* making it appear to this Court, that he had a Cause depending here, and he attending the same was arrested and detained contrary to the Ancient Privilege of this Court, whereupon this Court ordered the Bailiff *Cohome*, who last took him, to be committed to the Fleet for refusing to discharge him; this Court ordered the said *Meynel* and *Sterling*, Sheriffs of *Middlesex*, to discharge the said *Conquest* out of Custody, the Sheriffs acquainting the Court, the Case is as aforesaid, and that the said *Cooper* threatens to bring an Action of Escape against the Sheriffs.

This Court again ordered the said *Cohome* to be committed close Prisoner, and that the Sheriffs should forthwith discharge the said *Conquest* out of Custody, and that a Writ of Privilege be awarded in that behalf, whereupon the Sheriffs discharged the said *Conquest* out

A Prisoner discharged by Privilege of this Court, and no Escape to be brought against the

Sheriffs for
setting the
Prisoner at
liberty.

of Custody, yet the said *Cooper* brought his Action against the Sheriffs for the Escape, and will enforce the Sheriffs to pay the Debt, and so consequently invalid, and overthrow the ancient and undoubted Privilege of this Court.

The Court ordered the said Action against the Sheriffs, touching the Arrest, at setting at liberty the said *Conquest*, be discharged, unless the said *Cooper* shew Cause.

The said *Cooper* offered several Reasons for Cause, but this Court disallowed the same, and confirmed the first Order, and that the said Action be discharged, and all proceedings at Law, against the Sheriffs be stayed.

But the said *Cooper* insisted that his Debt is great, and if the said *Conquest* be under Protection of this Court, *Cooper* is like to lose it.

This Court declared *Cooper* may notwithstanding the former Orders proceed against *Conquest*, in order to the satisfaction of his Debt, as he should see Cause.

Rowel cont. *Walley*, 13 Car. 2. fo. 909.

Mortgage.
post 223.

THE Bill is, That the Plaintiff *Hannah* being the Widow of *Anthony Sharp*, Predecessor to her Husband *Simon Geering*

Geering, who left her a considerable Estate, and on their Marriage settled a Mesuage, and Lands in *Kent*, called great *Walton*, on her for a Joynture, and afterwards the said *Simon* prevailed with the said Plaintiff *Hannah* to sell a Lease, whereof she was possessed as Administratrix to the said *Anthony Sharp* her former Husband, of the value of 40 *l. per Ann.* and also prevailed with her to joyn in a Mortgage of the aforesaid jointured Land for 300 *l.* to *Henry Walley* Father of the said Defendant; and in *Anno* 1650, the said *Simon* and the Plaintiff *Hannah* for 300 *l.* did by Deed Bargain and sell to the said *Henry Walley* the said Joynture Lands to him, his Heirs and Assigns for ever, in which Deed the said *Simon* covenanted, that he and the Plaintiff *Hannah* would make better assurance by Fine; and in the said Deed was a Proviso, That if the said *Simon Geering* and the Plaintiff *Hannah*, or either of them, or their Heirs, Executors, &c. did pay to the said *Henry Walley* his Executors, &c. 348 *l.* at the Time therein mentioned, then the said Fine to enure to the said *Simon Geering*, and the Plaintiff *Hannah*, and the longest liver of them, and after to the right Heirs of the said *Simon* for ever; and in *Michaelmas* Term 1650, a Fine was levied

levied, and the Monies not being paid according to the Provifo, and *Simon* wanting more Money, the faid *Simon* and *Hannah* by Deed of Confirmation in *April* 1653, for 146 *l.* more, besides the 348 *l.* confirmed the faid mortgaged Premises to the faid *Henry Walley* and his Heirs on Redemption, but before the Redemption the faid *Simon Geering* died, and the faid *Hannah* ordered the Tenant of the Premises to attorn to *Walley* till fatisfaction of his Demands, and afterwards the Plaintiff *Rowel* inter-married with the faid *Hannah*, and afterwards the faid *Henry Walley* by Will devised the faid Premises to the Defendant *James Walley*, and his Heirs: So to redeem the faid Premises, and to secure the faid *Hannah's* Joynture is the Scope of the Bill.

The Defendant *James Walley* insists he is willing to assign and convey the Premises as this Court shall direct, without whose direction he cannot safely do any Act, the other Defendant *Tho. Geering*, the Son and Heir of the faid *Simon Geering* the Mortgagor being an Infant.

This Court thereupon, and hearing the Answer of the Defendant *Thomas Geering*, by his Guardian, whereby the settlement upon the Plaintiff *Hannah* is owned to be as aforefaid was fatisfied,

ed, that the Estate of the Defendant Valley in the Premises is, but a Mortgage, and that the Plaintiff *Hannah* sought in Equity to enjoy the Premises during her Life, notwithstanding the fine by her passed as aforesaid; but this Court being tender of the prejudice of the Infant by a Redemption of the Premises before he came of Age, a Question arose in what Manner a Redemption should be made, and by whom, whether by the said *Hannah* or the said Infant, and by whom the said Mortgage Money should be paid.

This Court conceived it most just, that the said Plaintiff *Hannah*, and the said Infant should proportionably pay what was due upon the said Mortgage at the Time of the Death of the said *Simon Geeving*, the Mortgagor, rating the said Estate for Life of her the said *Hannah* in the Premises at one third, and the Reversion Fee of the said Infant at two Thirds from the Time of the said *Simon's* Death.

Redemption
by an Infant.

ante 90, 169. v.

The Widow
(who had an
Estate for
Life) and the
Infant Heir
to pay the
Mortgage off
proportionably.

*See 4. Case of Han-
d Vignores ante
32, 33.*

Woven contra Edwards, 13 Car. 2. f. 180.

THE Plaintiff's Suit is to have a Redemption of Lands, and the Defendant insisting on the Antiquity of the said Mortgage, and that by Reason of long

long Leases in being at the Time of the Mortgage, the Defendant could not receive any benefit of the Premises till the Leases expired.

The Lord Chancellor at this Hearing being 17 *Novemb.* 1660, dismiss the Bill.

Rehearing
upon the pen-
alty of tre-
ble Costs.

2. Vol. 195, 247.
3. Vol. 15, 16, 65.
29. Apr. 126.

But the Plaintiff praying a re-hearing on the Merits of this Cause, and offering Precedents where Relief hath been frequently given upon Mortgages more ancient, this Court granted a Re-hearing upon the Penalty of treble Costs, if the Plaintiff is not relieved.

The Case being, (*viz.*) That the Plaintiff being seised in Fee of the Premises worth 200 *l. per Annum* in 1637, mortgaged the same to the Defendant's Father for 250 *l.* and the Plaintiff agreed, and accordingly sealed a Deed for the absolute Purchase of the Premises to the Defendant's Father, if the 250 *l.* were not paid at the end of seven Years.

What shall
be said a
Mortgage
and not an
absolute Sale.

The Defendant insists that the Plaintiff being possessor of the Premises in Reversion, after the Expiration of certain Leases for Years from the Crown, did by Deed with Fine and Recovery thereupon, and dated 24 *Jan.* 1637, sell the said Premises to the Defendant's Father in Fee who never in his Life Time received any Profits, the Leases expiring after his Death which

which came to the Defendant, and he hopes accordingly to enjoy it, being an absolute Estate without any Defeazance.

The Master of the Rolls being assisted with Mr. Justice Hyde, on reading the first Order, and a Bill which was exhibited by the Defendant's Father against the Plaintiff to have the Lands or Mony, which makes it appear a Mortgage, and of several Precedents where Relief hath been given in Cases of like Nature, decreed a Redemption paying Principal and Damages,

Mortgages

Gillb. Rep. 106, 110, 122, 150, 155. &c.

ante 20, 33, 50.

60, 97, 105, 169,

210. &c.?

2. K. 209, 227,

100, 106, 107. &c.

3. K. 56, 63, 83,

05, 215, 222,

1. Ch. C. in tab.

&c.

Whorwood contra Whorwood, 14 Car. 2. fo. 1016.

J. C. 1. Ch. C. Cas. 250.

3. Apr. 5. 47.

A Bill of Review to reverse a Decree for Alimony.

Alimony &c.?

ante 44, 164,

106. - Gillb. Rep.

17. 152. &c.

29. Apr. 67, 90.

The Plaintiff insisted for Error, that there is no Foundation whereon to justify the said Decree or Proceedings thereon or that there is no Confirmation thereof by the Act of Judicial Proceedings, and that there are several Votes in the Commons House of Parliament for that purpose.

This Court referred it to the Judges on these two Points (*viz.*) Whether the Decrees for Alimony made in the late Times are confirmed by the said Act, and whether

Decrees for
Alimony
confirmed
by the Act
of judicial
Proceedings.

ante 107.
see Vol. 3. - 1.
2. Vol. 211.

whether in this Case Bills of Review do
lie for the Reversal of the same.

Ten Judges certified in *Mich.* Term
1662, that Decrees for Alimony made
in the Court of Chancery in the late
Times, are confirmed by the Act for Con-
firmation of Judicial Proceedings.

And that a Bill of Review doth not
lie for want of Authority in that Court
to make Decrees in Cases of Alimony,
but it lies for other Defects not remedied
or provided for by that Act, and all the
Judges of *England* agreed to the same
Opinion though not subscribed.

Mead cont. *Cave*, 14 *Car.* 2. fo. 915.

THAT *Charnel Petty*, Grandfather of
the Plaintiff and Defendants *Char-
nel Mead* by his Will devised Lands to
Trustees, that they should out of the
Profits thereof pay unto the younger
Children of his Daughter *Mead*, the
Plaintiff's Mother, 400 *l.* equally to be
divided, and the said Plaintiff's Mother
had six Children, so that five of them are
within the intent of the Will to have
80 *l.* apiece, but the Defendant *Charnel
Mead* insisting that the 80 *l.* apiece doth
not belong to the Plaintiffs, for that they
are elder in seniority of Years than he

the Defendant *Charnel Mead*, the sixth Child, being a younger Child than any of them, and that he ought to have the said Money, whereas younger Children in this Case is to be taken as distinguished from the Heir at Law, and not from the elder Children in Age, and that it was the intent of the Testator it should be so appeareth by this, that the Defendant *Charnel Mead* was his Father's eldest Son, and was to inherit a fair Estate by descent from him after his Death.

Who shall be said to be younger Children to take benefit of a Devise.

This Court was clear of Opinion that the Plaintiffs were within the said Trust, and that the Defendant *Charnel Mead* ought to be excluded by the Intentions of the Testator, and decreed the Plaintiffs the 80 l. apiece, and the Defendant *Charnel Mead* to be totally excluded.

Cropley contra Marquiss of Newcastle,
14 Car. 2. fo. 923.

THAT *Edward Cropley* deceased, the Plaintiff's Father and Testator, in 1640, did lend to the Defendant 1200 l. on Bond; the Plaintiff as Executor to his said Father, is intituled to the said Bond, and the Defendant being beyond Sea, and having authorized *Edward Butler* to manage his Affairs and to pay his Debts, and for that purpose to sell his

Sale of Lands by Consent.

Q Estate

Estate; and the Defendant importuned the Plaintiff to purchase the Capital Messuage in *Clerkenwel*, and the Manor of *Flabrough* now in question, assuring the Plaintiff it would be a great kindness to the Defendant, the Marquis, and inable him to pay his Debts, and provide for his Children, and told the Plaintiff that he should have a good Title, for that the Marquis, before the troublesome Times, had settled the Premises on himself for Life, Remainder to his Brother Sir *Charles Cavendish*, the said *Robert Butler*, *James Whitehead* and *John Rolston* and their Heirs upon Trust to sell; but the Plaintiff desired to have the Marquis his Approbation of the said Sale, whereupon the said *Butler* told the Plaintiff that the Marquis since his departure wrote several Letters to him and Viscount *Mansfield*, the eldest Son of the said Marquis, to expedite the Sale, and had by Letters also the Marquis's Approbation and Allowance of the Plaintiff's purchase of the Premises, and upon the said *Butler's* Offer, that the said *Cropley*, Viscount *Mansfield*, and *Henry*, now Viscount *Mansfield*, the Marquis's second Son, should join with the Trustees in the Conveyance, was encouraged to proceed in the purchase of *Flabrough*, and agreed to give 7400 *l.* for the same; and as to the manner of

the Conveyance and Title, the Plaintiff relied on the said *Butler*, who was unwilling to produce the Deeds of Settlement on the Trustees, lest he should thereby discover the Posture and Condition of the Marquis's Estate; that by Deed in 1654 inrolled, whereby the said *Charles Viscount Mansfield* since deceased, and *Henry* now Viscount *Mansfield*, then eldest and second Son of the said Marquis, and all the Trustees were Parties, the said Manor was conveyed to the Plaintiff and his Heirs for ever; and the Plaintiff paid the said 7400 *l.* (*viz.*) 5600 *l.* in ready Money, and 1800 *l.* was allowed the Plaintiff for his Debt, and afterwards the said *Butler* pressed the Plaintiff to buy the House in *Clerkenwel*, and writ to the Marquis touching the same; the Marquis by the Name of *John Forrest*, which Name he then used, wrote an Answer to *Butler* and thanked him for what he had done, and ordered him to sell the said House, whereupon the Plaintiff by Deed 30 *Jan.* 1654, inrolled, for the consideration of 1400 *l.* paid to the said Sons and Trustees, had the same Messuage conveyed to Trustees for the Plaintiff and his Heirs; but the said Marquis being returned again into *England*, says, he gave no Authority or Consent to the said Sales, and that the Trustees had only

the Power to sell the Reversion after his Death, and will not confirm the said Purchases, pretending he hath an Estate for Life in the Premises, which neither his Sons nor the Trustees had power to sell and claims the Premises for his Life.

The Defendant, the Marquiss, insists he did not intend his Trustees to sell any other Estate than they were intrusted with, and that the Reversion it self was Bargain great enough for the Money agreed for.

Now the Point in Controversy is, whether the Defendant, the Marquiss, did consent to or allow of the said respective Sales as to his own Estate for Life, reserved to him by the said Indenture Tripartite, or whether the Plaintiff's said respective Purchases should only relate to the Reversion in Fee after the Marquiss's Death.

Whether an absolute Fee or only a Reversion for Life consented to be sold.

This Court with the Assistance of the Judges on the reading a Paper of Advice under the Hands of the Marquiss's learned Council in 1649, and Letters from the Marquiss, were all clear of Opinion that the Defendant, the Marquiss, did consent to the absolute Sale of the Inheritance of the Manor of *Flabrough* and the House in *Clerkenwel*, and that the Plaintiff is a fair Purchaser thereof for a full Consideration, which came and was applied

plied to the Marquis's Use and Benefit, and the said *Charles Viscount Mansfield* having covenanted for enjoying *Flabrough* against the Marquis, was a farther Evidence of the Intention of the Parties, and decreed that the Plaintiff and his Heirs shall enjoy the said Manor of *Flabrough* and the House in *Clerkenwel* against the Marquis, and all claiming under him, and the Marquis to make Assurance of his Estate in the Premises to the Plaintiff and his Heirs, &c.

Eyre contra Jackson, 14 Car. 2.
fo. 751, 875, 910.

3. Vol. 15.

THE Bill is a Bill of Review to reverse a Decree whereby the now Plaintiffs were decreed to give the now Defendant satisfaction for his Losses, the now Plaintiffs having Plundered the said Defendant in late Times of his Goods, Household-stuff, and of Debt-books, Bonds and Specialties, so as he could not make proofs to ground an Action at Law, and the now Plaintiffs were decreed to pay the now Defendant 400*l.* besides the Goods and Money which the said now Defendant received back from the Plaintiffs, and the same to be in satisfaction of the Defendant's Damages, Losses and Costs, and he to prosecute which of the now Plaintiffs

Decree reversed.

Plaintiffs he pleases upon the said Decree, and the now Plaintiffs to prosecute each other to pay their proportions.

This Court
not to assess
Damages for
a Trespass,
&c.

The now Plaintiffs insist that the Decree is erroneous and ought to be reversed, for that it is contrary to the Rules and Practice of this Court to deprive the Courts of Law of the determination of Matters there determinable, or to assess Damages for a Trespass, which ought to be ascertained by a Jury at Law and not otherwise; and the Plaintiffs have paid the said 400 *l.* above eight Years before the Bill exhibited to their Prejudice; for the Plaintiffs insist that the Decree ought to be reversed, and they restored to all that they have lost and been damnified by the said erroneous Decree.

The Defendant pleaded and demurred, and insisted that the now Plaintiffs were decreed to pay 400 *l.* and paid the same and rested satisfied therewith eight Years; and also pleaded the Act of Oblivion in Bar of the Plaintiffs demand, which was reserved till the Hearing, and on Hearing the said Decree it was reversed.

But as to the Point of Restitution his Lordship would advise, whether the Act of Oblivion ought to bar the now Plaintiffs from being restored to what they have lost by the said Decree.

This

This Court with the Judges declared that the now Plaintiffs notwithstanding the Act of Oblivion ought to be restored to all they have lost or been damnified by the said Decree, and reversed the Decree, and ordered the Defendant to repay the 400*l.* with Damages and Costs.

But the Defendant insisted, that by the Rules of the Common Law where a Judgment is reversed and Restitution awarded, the Courts of Law give neither Damages nor Costs, and that this Court doth usually guide it self by the Rules at Law.

This Court desired to see Precedents where Damages and Costs had been given in Cases of this Nature, and finding no Precedents could be produced, this Court would not charge the Defendant with Damages or Costs.

Domina Cramborne contra Dalmahoy,

14 Car. 2. fo. 519.

J. C. Vel's Rep. 206. p. 1.

of 29. ch. 23. p. 4.

W. B. P. 10. p. 1.

THE Bill is to review and reverse a Decree made the 3d of May, 1655, in a Cause wherein Elizabeth Dutchess of Hamilton was Plaintiff against Elizabeth Countess of Dirlton, and the Countess of Cramborne, (now Plaintiff) Defendants to settle the Trust of Gilford Park, and other Lands, and the Equity of Re-

1. Cha. C. 54, 123.

29. Apr. 164. c. 2.

demption of *Wauborough*, and other Lands all in Com' *Surrey*, and directing the Reversion of all the Premises after the Death of the said Countess of *Dirlton* to be conveyed by the Defendants therein named to the said Dutchess, her Heirs and Assigns.

The now Plaintiff insists that the Decree is erroneous, and ought to be reversed, for that at the making thereof, there was no Bill or Cause in Court depending; for that the Dutchess of *Hamilton*, who was Plaintiff in the said Decree, sued as a sole Woman; and after her Bill in 1653, which was before the Decree, she married the now Defendant Mr. *Dalmahoy*, whereby the Bill of the Dutchess and all Proceedings abated and became void, and no Bill of Review was brought, and the said Dutchess continued married till after the Decree; and for that the Decree was contrary to Law and Justice, it appearing that the Deed made by the Earl of *Dirlton*, whereupon the Decree was grounded, was in the Nature of a Feoffment, but never executed by Livery, appeared to be voluntary to disinherit the now Plaintiff, and if it could not operate at Law it ought to have no Force or Countenance in Equity being made but the day before he died.

Abatement
of a Bill.

1. Term. 31. 8.

Plaintiff sues
her Bill as
Sole, and
after married
and then a
Decree, yet
this is no er-
roneous De-
cree.

To

To which Bill the Defendant pleaded and demurred, and insisted, That the Decree ought not to be reversed, or that the Error that the Dutcheſs was married is only Matter of Abatement, and not to the Right, and appears not in the Body of the Decree, but is Matter of Fact out of the Decree; and that the Plaintiff hath assigned for Error and not for new Matter, and were it ſo, ſhe might have had Advantage thereof before the Hearing, and ought not now to be admitted to it, and no Advantage could be taken thereof but by Abatement.

And the other Error assigned is no Error, but the Cause adjudged upon the Deeds and Proofs of the Earl of *Dirlton's* Intentions.

This Court, with the Assistance of the Judges, held the Plea and Demurrer good, and diſmiſt the Plaintiff's Bill of Review.

Nanney cont. *Martin*, 14 Car. 2. f. 334, 535.
15 Car. 2. f. 232.

THE Case, That *Hugh Nanney* deceased and *Sarah* his Wife exhibited their Bill into this Court against the Defendant *John Martin* for a Legacy of 300 *l.* and other Monies devised unto the Plaintiff *Sarah*, (before Marriage) by the Will

S.C.
1 Chancery
Cases, 27.

Reports in Chancery.

Will of *Martin Cornick* (her Father) deceased.

That 2 *Decemb.* 13 *Car.* 2. It was decreed, that the Plaintiff be paid the 300*l.* and other Monies payable by the said *John Martin*.

This Decree was inrolled, and afterwards the Plaintiff, *Hugh Nanney*, died intestate, *Anne Nanney* took Administration of the Goods of the said *Hugh Nanney*, and by virtue thereof claims the said 300*l.* and other Monies decreed unto the said *Hugh Nanney* and *Sarah* his Wife in the Life time of the said *Hugh Nanney*.

Whether the Money so decreed do belong unto the Administratrix of the said *Hugh Nanney* or to the Complainant *Sarah*, is the Question.

This Court referred it to a Judge to certify.

A Decree in Equity like a Judgment for Debt or Damages at Common Law.

2. Vol. 193.

The Judge gave his Opinion (*viz.*) First, I conceive that a Decree in Chancery for Money or any other personal Thing, being a Judgment in Equity, is of the like Nature with, and ought to be governed by the same Rules as a Judgment for Debt or Damages at Common Law, and Consequently that the Interest or Benefit of this Decree, and the Money due thereby ought to go and be unto such of the said Parties as should have

have Right thereto, in Case it were a Judgment for Debt or Damages at Common Law.

Secondly, If a Judgment be had by Husband and Wife (at Common Law) in an Action brought by them both for a Debt due unto the Wife before Marriage, and the Husband dies after the Judgment and before Execution sued, I conceive that the Debt due on this Judgment belongs to the Wife, and she shall sue Execution upon the Judgment, and not the Executor or Administrator of the Husband: all which I humbly submit to the Judgment of this Honourable Court.

Judgment had by Baron and Feme in Action brought by them both for Debt due to the Wife before Coverture, Baron dies, the Wife shall have Execution, and not the Executor of the Husband.

Robert Hide.

This Court confirmed the Judges Certificate.

*Martyn contra Perryman, 14 Car. 2.
fo. 966.*

THIS Court decreed a Partition notwithstanding Feme Coverts and Infants, and some Incumbrances were in this Case concerned.

Partition.

ante 49.

Roberts

Roberts cont. Wynn, 15 Car. 2. fo. 434.

Will.

THE Bill is to be relieved against the Will of *John Bodvile*, Father of the Plaintiff *Sarah*, pretended to be gotten by the Fraud and Practice of the Defendant *Wynn*, which Will tends to disinheret the Plaintiff *Sarah*, the said *John Bodvile's* only surviving Daughter and Heir of a great Estate in Lands, and to settle the same on the two Defendants, *Griffith Wynn* Son of the Defendant *Tho. Wynn*, and *Tho. Bodvile* Infants.

The Case is, That the said *John Bodvile*, deceased, upon his inter-marriage with *Anne* the Daughter of Sir *William Russel*, and in consideration of 5000 l. Portion settled the Premises on himself and his Heirs Males on the Body of the said *Anne*, Remainder to his right Heir, and the said *John Bodvile* died without Issue Male, by virtue whereof, and of the said Settlement the Premises would have descended to the Plaintiff *Sarah*, who married the Plaintiff *Mr. Roberts*, Son of the Lord *Roberts*, Lord Privy Seal, and who had Issue by the said *Sarah* two Sons and two Daughters in the life-time of the said *John Bodvile*, and who was so well satisfied with the said Match, that he did on the Birth of the second Son

Son of the said Plaintiff become Godfather, and named him *Charles Bodvile Roberts*, and declared he would make him his Heir, with several other Expressions, and declared that if the Lord *Roberts* would settle on his Son, the Plaintiff, an Estate, he would so settle his Estate that it should come to his said Daughter *Sarah* and her Heirs, whereupon the Lord *Roberts* settled 3000 *l. per annum* upon his Son Mr. *Roberts*, and his Issue on the Body of the said *Sarah*; and in the Year 1660, the said Mr. *Bodvile* made his Will, whereby he gave all his Estate to the said *Sarah* for Life, Remainder to her Son *Charles* in Tail, and made the said Plaintiff *Sarah* Executrix, and declared, that though he had since levied Fines of all his Estate, yet he did not in the least thereby intend to revoke the said Will, or disinherit his said Daughter, nor would give one Foot of Land away from his Daughter *Sarah*, and his Grand-son *Charles Bodvile*: but in *December* 1662, the Defendant *Wynn* by practice got the said *Bodvile* to make another Will, who at that Time was very infirm, and which was twice published, whereby he settled all his Estate in Trustees for the Use of two Infants, (*viz.*) one named *Bodvile* an obscure

scure Child, and the other was the said Defendant *Wynn's* Son.

The Defendant insisted that *Bodvile* upon Marriage with the Plaintiff *Sarah's* Mother, had 5000*l.* Portion, and that *Bodvile* upon the Settlement made upon the said Marriage, did tye nothing upon his Daughter but 5000*l.* in Money, and (that) upon condition that she married with his consent, and reserved the Power of his Lands to himself, lest he should have Issue Male by a second Wife, and by this Will gave 5000*l.* to his said Daughter, though she did Marry without his consent, but with a Proviso, that she should not question his Will, or disturb or hinder his Executors; and that his said Daughter *Sarah*, the Plaintiff, married in 1657, but there was no Reconciliation till the year 1660, but had declared he would never settle his Estate on his Issue Female; and that the said *Bodvile* had always a great kindness for the Defendant *Wynn*, and his Family, and that *Wynn* had no Hand in making or contriving the said Will.

So that the effect of the Suit is to have the said Will in 1662, set aside and made void.

This Court with the assistance of the Judges, and on reading several Precedents on the Plaintiff's Part, declared they did

not

not conceive it of any Consequence or Value that the Defendant for whom the Estate is settled in the Trustees were Infants, and not privy to the Fraud, for if that should be admitted to bar the Heir from Relief, any third Person might for the Advantage of his Children or Relations, by Practice set up a Will or Deed, and put it out of the Power of the Court to set aside, or make void such a Will or Deed; and they were also of Opinion, that the making of this Will was not an Act of Prudence or Honesty in Mr. *Bodvile*, but rather of great Injury and Injustice, the same tending to disinherit an Heir, and only Child, being innocent and inoffensive, and to introduce Strangers without any Reason of Affinity or Merit; and it appeared Mr. *Bodvile* always intended to leave his Estate to his Daughter if she married with his consent; and his Lordship farther declared, that although the Marriage of the Plaintiff *Sarah*, without Mr. *Bodvile*, her Father's consent, was an High Trespass, insomuch that if his passion had possessed him from that hour, and he would have resolved to have punished it with a total disinherison, his Lordship would not have relieved her; nevertheless it now appeared that she was reconciled before 1660, and well satisfied

Will contri-
ved. *ante* 22.

Prevailing
Circumstan-
ces in Equity.

This Court
cautious to
Decree with-
out a Prece-
dent.

satisfied in the Match, and that he intended to settle his Estate on the Plaintiff, as by the Will in 1661, and it appeared that the Defendant *Wynn* was the Contriver of this Will, and that Mr. *Bodvile's* promising to settle his Estate on his Daughter, and her Heirs, induced the Lord *Roberts* to make the settlement of 3000 *l. per Annum* on the Plaintiff Mr. *Roberts* and his Issue by the said Plaintiff *Sarah*, which did carry in it a great Circumstance of Equity against the pretended Will, although there was no such formal Agreement executed, which according to the course of Proceedings could in Equity be ground enough of it self for a Judicial Decree against the said Will.

His Lordship, with the Judges, were of Opinion, that the said Will was obtained by great fraud and circumvention of the Defendant *Wynn*, but by reason the Precedents did not fully reach to this Case, whereby there might be a Decree without creating a Precedent, which, if any one, his Lordship declared he would have Decreed the Cause, therefore his Lordship and the Judges held it not fit at present to make a Decree finally to determine this Cause, yet declared that there appeared so much Fraud in the Defendant *Wynn* in gaining the Will

Will, and so much Equity and Justice in the Plaintiff's Cause, that they would not dismiss the Plaintiff's Bill, or relieve the Defendants upon their Bill; but the Matter being fit to be relieved, and yet not ripe for a Decree, this Court gave the Plaintiff a Years time to take such further Course against the said Will as he should be advised, and the Injunction to continue.

The Plaintiff petitioned the House of Lords, who upon several long Debates referred it back to the Lord Chancellor to decree for either Party according to Justice and Equity, although no Precedent should be found for that purpose.

And his Lordship, with the Judges, upon several Days hearing the Matter, declared they could not relieve the Plaintiff in this Court, and dismiss the Plaintiff's Bill without Costs, and dissolved the Injunction.

Simmons cont. Cornelius, 15 Car. 2. fo. 73.

THE Bill is to have an Agreement *in Specie* to be performed, the Defendant demurred, for that there was but 20 s. paid as earnest to bind the Bargain, which is but an inconsiderable execution of the Agreement, and it being

Demurrer to a Bill for performance of an Agreement by reason of inconsiderable earnest allowed.

R

ing

ing not under Hand and Seal, the Court allowed of the Demurrer.

Minshal cont. *Minshal*, 15 Car. 2.

THE Plaintiff got an Injunction to stay Waste, or felling of Timber Trees from off the Premises.

Injunction
to stay fell-
ing of Tim-
ber dissolved,
for that the
settlement
was without
impeach-
ment of
Waste,

ante 106, 107.

The Defendant moves to dissolve the Injunction, insisting that he hath sworn in his Answer that he hath an Estate of Inheritance in the Premises, and hath for fourteen Years cut down Timber growing upon the said Premises, and sold the same without interruption, and upon producing the settlement which was made by the said Defendant upon the Marriage with his Wife, thereby it appeared that he had an Estate in the Premises in question, without impeachment of Waste,

His Lordship ordered the said Injunction to be absolutely dissolved.

Field cont, *Clerk*, 15 Car. 2. fo. 790.

Obligee
makes the
Obligor Ex-
ecutor, the
Bond not
discharged in
Equity, being
for security
of Arrears of
Rent.

THE Defendant entred into Bond to the Testator, and after the Testator makes the Defendant his Executor, whereupon the Defendant insists the Bond is thereby discharged in Law.

This

See *Report*. 240.

This Court declared, That though the Bond was discharged in Law, yet in Equity the Defendant ought to account the Arrears of Rent thereby secured.

Hunby cont. Johnson, 15 Car. 2. fo 293.

TH E Defendant won of the Plaintiff playing at Cards 105 l. which the Plaintiff upon account did own to be due to the Defendant, whereupon the Defendant brought his Action of the Case, and declared on *indebitatus assumpsit* for 105 l. and upon an *infinimul computaverunt* for 105 l. to which the Plaintiff pleaded *non assumpsit*, and upon a Trial a Verdict passed for the Defendant for 105 l. Damages, and he hath since taken out Judgment and Execution, and therefore in respect there were only Damages recovered, whereof the Jurors were the proper Judges, and for that the Bill was exhibited after Judgment and Execution; as by the Records and Proceedings duly carried on, according to the Rules of the Court of Common Pleas.

Plea and Demurrer to the Bill, it being to be relieved after Verdict, Judgment and Execution at Law allowed.

The Defendant demurs, and pleads, and demands Judgment, whether he shall farther answer that part of the Plaintiff's Bill as concerns the Verdict and Judgment.

This Court allowed the Plea and Demurer.

Dominus Digby cont. Morgan, 16 Car. 2. fo. 799.

THE Lord *Digby's* Bill being to be relieved for a Messuage in *Queen-street*, which was purchased by the Earl of *Bristol*, and there being then a Lease of 99 Years made of the Premises by one *Newton*, the said Earl took an Assignment thereof in the Names of *Philip Digby* and *Arthur Everard*, and the conveyance of the Fee he took in the Name of the Defendant *Broom* and *Hodges* in Trust for the said Earl, and the said Earl by Deed, 23 Feb. 17 Car. 1. settled the Premises, and therein declared that his Son *John Digby* should have the Premises to him and the Heirs of his Body, Remainder to the Plaintiff *John Lord Digby*, and the Heirs of his Body, Remainder to *George, Francis*, and every other of the Sons of the now Earl of *Bristol* in Tail, Remainder to the Daughters of the now Earl in Fee, and that the Estate which *Broom* and *Hodges* had, should be subject to the Trust aforesaid, with Power of Revocation to the said Earl; and in 1651, the said Earl by Will confirmed the said Deed, and

and soon after died, after whose Death the said *John Digby* his Son took the Profits; and the said *John Digby* being dead without Issue of his Body, the Plaintiff, the Lord *Digby* claims the Premises according to the Trust; but the Defendant *Diana Digby* taking Advantage of *John Digby's* being beyond Seas, and concealing the Trust, procured the said *Philip Digby*, and the said *Everard* to assign their Interest in the Premises to *Newman* and *Hussey*, who by the said *Diana's* importunity mortgaged the same to one *Currance* for 560 *l.* That afterwards the Defendant *Langhorne* purchased the said Lease and Inheritance of the Premises of the said *Diana* for valuable Consideration, paying off the 500 *l.* to *Currance*, who having the said Lease forfeited to him, assigned to *Langhorne* with the consent of the said *Diana*, and then in 1663, procured the said *John Digby* to suffer a Recovery of the Premises, and declared the Use to the said *Langhorne*, and the said *Langhorne* insists he is a Purchaser without Notice of the Plaintiff's Title; and if any such Entail were as the Plaintiff pretends, the same is cut off in Equity by the Recovery.

Assignment
of a Trust
in a Lease.

*Gill. R. 2209.
J. Ch. C. 109.*

A Purchaser
for valuable
Consideration
without
notice of a
Trust.

*ante 12, 35,
62, 138.*

But the Plaintiff insists that the Recovery is void in Law, the said *John Digby* having no Estate of the Free-hold,

but a Trust cannot bar the Plaintiff's Equity.

A Lease in Trust separate from the Inheritance, and mortgaged, and assigned to a Purchaser, not to be impeached.

This Court, with assistance of the Judges, were of Opinion, that the Lease of 99 Years was separate from the Inheritance, and well conveyed by *Newman* and *Hussey*, and that the said Lease for so much as was mortgaged to *Currance*, and by him assigned to *Langhorne*, might not be impeached, and decreed *Langhorne* to enjoy for the Remainder of the 99 Years as was mortgaged to *Currance*, and the Bill as touching the Lease to be dismissed.

Brest cont. *Offley*, 16 Car. 2. fo. 746.

THE Suit is touching a Legacy of 200 *l.* given by the Will of *John Wynn* to the Plaintiff, of which Will he made his Wife the Plaintiff's Sister Executrix, who since hath married the Defendant *Offley*, his Executrix, but the Defendants refuse to pay the said Legacy.

The Testator desires in his Will, his Executrix to give the Plaintiff 200 *l.* it's a good Legacy

The Defendant insists, that the Testator made such Will, and thereby desired his Executrix, the Defendant, to give the Plaintiff 200 *l.* but left it wholly to the said Defendant's own free will, how, when and in what Manner to dispose of it to him; and the Defendant insists

insists she ought not to be questioned for the same in this Court, it not being the intention of the Testator to make the Defendant liable to the Plaintiff's Suit for the same, but do own Assets in case the Court adjudge the Payment of the said Legacy in any other manner than is directed by the Will.

This Court is satisfied that the said Legacy of 200*l.* is due and payable from the Defendant to the Plaintiff, and decreed the same to be paid accordingly.

Proctor cont, Reynel, 16 Car. 2. fo. 781.

A Sequestration was awarded to se- Sequestra-
quester the Manor of *Shampton*, tion. *ante 64153,*
and all the Estate real and personal of *1000. - 2. 154,*
Sir Thomas Reynel to satisfy a Decree, out *191, 244,*
of which Manor the Defendant, the Lady *Vol. 3 - 07.*
Reynel had an Annuity, which during the
Life of the said *Sir Thomas* her Hus-
band was sequestred, but *Sir Thomas* be-
ing dead, insists that the Sequestration
ought to be taken off.

The Plaintiff insists, that the Seque-
stration is particularly to sequester the
said Manor, and all the Estate real and
personal of the said *Sir Thomas Reynel*,
and the said Annuity was the Estate of
Sir Thomas in right of his Wife, and
cannot be accounted a separate Mainte-
nance.

R 4

The

Sequestration
on discharged
as to an
Annuity af-
ter the death
of the Of-
fender.

The Defendant insists, that her Father settled the Annuity on her for Life as a Maintenance for her in lieu of Joynture, and gave her no other Portion.

His Lordship declared that this Court cannot continue the said Sequestration upon the said Estate, the said Sir *Tho.* being dead, for whose Offence the same was sequestred, and discharged the Sequestration of the said Mannor as concerning the said Annuity.

Sewel. cont. Freeston, 16 Car. 2. fo. 795.

THE Bill is to be relieved against a Verdict for 200 *l.* upon an *indebitatus assumpsit*, whereupon Judgment is obtained, and a Writ of Error brought by the Plaintiff.

Demurrer to
a Bill exhibi-
ted after Ver-
dict, Judg-
ment and
Writ of Er-
ror allowed.

The Defendant pleaded the Matter properly examinable before the Judges in the Court where the Action depends, and not in this Court, especially upon a Bill exhibited after a Verdict, Judgment and Writ of Error.

This Court on perusal of Precedents conceived the Matter of the Bill to be of ill Consequence, and allowed the Demurrer to the Bill,

Fleming

Fleming cont. *Taylor*, 16 Car. 2. fo. 228.

THAT *John Fleming* the Plaintiff's Father by Deed in 1643, for the securing of 1000 *l.* with Interest, demised the Lands in question by Lease to *Samuel Ferrers* to be void on payment of the said 1000 *l.* and Interest, and after in Trust for the Payment of all his Debts if he left not sufficient personal Estate to do the same, and after the Profits of the Premises to go towards maintenance of the Plaintiff, and upon Payment of his Debts as aforesaid, the Mortgage to be void, and that *John Fleming* dying in 1643, being sole Executor of *Giles Fleming* his Father, and had Assets to pay his said Father's Debts, the Defendant *Taylor* claims a Debt of 500 *l.* owing to *Samuel Ferrers* by the said *Giles Fleming* on the Foot of an Account made up betwixt the said *Samuel Ferrers* and *John Fleming* over and besides the said 1000 *l.* the said *Taylor* being intituled to the said 500 *l.* by vertue of an Assignment of the Commissioners of Bankrupt of the Estate of the said *Ferrers*, and is now in possession of the said Lands in question, and the only question being whether the said 500 *l.* owing to *Ferrers* by the said *Giles Fleming*, who left Assets

Settlement
by Lease first
in Mortgage
and then for
payment of
Debts.

A Debt due from the Testator charged on a Lease made by the Executor.

Assets enough to pay his Debts shall be charged on the said Lease, or the Mortgage aforesaid, made by the said John Fleming, as if it were the said John Fleming's particular Debt.

This Court declared the said Lease shall be liable to the Debts of John Fleming as he was Executor of Giles Fleming his Father.

Kingsmil cont. Ogle, 16 Car. 2. fo. 560.

Construction of a Will.

ante 100.

post. 256, 257.

THAT Sir William Kingsmil by Will in Writing devised as follows, (*viz.*) First, All my Lands and Tenements I give and bequeath unto my only Son William Kingsmil (the now Plaintiff) and his Heirs for ever; and my Will is, That my Executrix shall from time to time during his Minority receive the Rents, Issues and Profits thereof, to be disposed and imployed of by her towards his and his Sisters Breedings, and Payment of Portions and Legacies devised, and gave to his Daughter Bridget 3000 l. and to Anne 1500 l. to be raised out of the Profits of the real and personal Estate with all convenient speed, and to be put out for their best benefit, with Interest, and the residue of his Goods Chattels and personal Estate, he gave to Dame Anne his Wife, whom he made

made Executrix, and at the making of his said Will, declared he only trusted his Executrix, with the Receipts aforesaid, for the purposes aforesaid, and to be accountable to the Plaintiff *William* for the surplus, and the same should be employed for his Use; that the Executrix proved the Will, and married the Defendant, and the Defendant's said Wife dying, the Defendant denies the trust, though his Wife had declared the Trust, and before her Marriage made a Deed to one *Mason* for the better execution of the said Trust, in respect she was not fit to manage such Affairs; but the Defendant insists, that the Deed was made with power of Revocation, and so void, and that the Defendant is intitled to the said profits, until the said *William* attains his age of 21 Years.

This Court was fully satisfied that it was the intention of the Testator, and so proved, that after Debts and Legacies raised out of the real and personal Estate, the over-plus of the real Estate was in Trust for the Use of the Plaintiff *William*, the Testator's Son and Heir, and decreed the same accordingly, and the Defendant to account accordingly.

Peachy cont. *Vintner*, 16 Car. 2. fo. 77

THAT the Plaintiff in a Bill of Revivor had omitted to make the Defendant *Margaret* the Wife of the Defendant *Robert Vintner*, who was Defendant to the Original Bill, in whose Right only the Defendant claims, a Party in the said Bill of Revivor, which omission the Defendant insists will be error in the Body of the Decree, and would have the Cause reheard.

The Plaintiff insists that the Defendants are now come too late by the course of the Court for to have a rehearing as to the merits of the Cause by Way of Appeal against a decreed Order in *Michaelmas* 1662, for that the Defendants have bound themselves by the said Proceedings, and have submitted thereto, and though the Plaintiff omitted in the Bill of Revivor to pray Process against the Defendant *Margaret* yet the Defendants by their own Act have made her a Party; the Defendants made several motions in her Name, and executed a Commission in her Name since the Decretal Order, and named her Defendant in the Title of several Orders and now after a Report made that confirmed *nisi*, and a Reference to the Master

Omission in a Bill of Revivor to make one Defendant a Party no cause of rehearing, the Proceedings having been in the said Defendants Name.

er to rehear the Cause, would be to
ake a Precedent of very ill and dan-
rous Consequence.

His Lordship declared the Defendants
me too late for a rehearing, and the
efendants ought not to take Advantage
their own default, they by their own
et having made the Defendant *Margaret*
Party Defendant to a Bill of Revivor,
r Name must now be used as a Defen-
ant throughout the Cause, and would
ot relieve the Defendants.

Coker cont. *Beavit*, 16 Car. 2. fo. 378.

THE Plaintiff hath a Decree for the
Redemption of a Mortgage, and
e Time for the performance is elapsed,
which the Defendant would take
advantage, the Decree being signed and
rolled.

It appearing that this Court having
ry often in such like Cases of inevi-
ble Necessity, and no wilful Default
pearing in the Party, enlarged the Time
to the performance of Decrees, not-
withstanding such Decrees have been sign-
and inrolled, and this being also new
atter subsequent to the Decree; this
ourt declared the Plaintiff was capable
Relief, and decreed to go to an Ac-
unt.

Mortgage.

1 Chancery

Cases, 61. 3, 52.

Time enlar-
ged as to the
performance
of a Decree
for Redemp-
tion of a
Mortgage.

post 62.

Colt

Colt. cont. Colt, 16 Car. 2. fo. 749.

Bill for
Dower out
of a Trust
dismiss.

3. Vol. 94.
2. ante 36, 132.
1. Co. 123.
Cro. Cha. 190.
Show. Pl. Ca. 72.
29. Abr. 217.

THE Plaintiff claims a third Part of the said Trust for her Dower.

This Court to so much of the Plaintiff's Bill as relates to the Dower of the Plaintiff *Elizabeth* claim'd by her out of the said Trust; ordered that the said Bill be dismiss.

Stanley cont. Mandesley, 17 Car. 2. fo. 599.

Mortgage
Money de-
creed to the
Executor,
and not to
the Heir.

THE Testator lent 1400 l. to one *Pershal*, and took a Mortgage of Lands to him and his Heirs in Fee, de feazanced to pay the said Mortgage Money to him, his Executors or Assigns.

This Court declared the Mortgage Money belonged to the Executor, and not to the Heir.

Corbet cont. Morris, 17 Car. 2. fo. 569.

Children's
Portions.

THE Suit is touching 1000 l. for which the Plaintiff as Executrix to her late Husband, seeks to be relieved; that Sir John Corbet Father of Vincent Corbet, the Plaintiff's late Husband, by Deed of Settlement made in

1652

1652. appoints 1000 *l.* apiece to be paid to every one of his Children therein named, (of which the said *Vincent* was the eldest) as should be then unmarried, or not provided for at the Time of the decease of the said Sir *John Corbet*, at their respective Ages of 21 years successively one after another according to Seniority of Age, and the eldest to be the first. And the Question being, Whether the Plaintiff, who was Wife and Executrix of her said Husband *Vincent Corbet*, shall have the said 1000 *l.* being devised to her by the Will of her said Husband, although he was of Age, and married before the said Settlement, but never had any provision made for him by the said Sir *John Corbet* his Father.

The Defendant insists the Plaintiff had no Right to the 1000 *l.* for that the trust limited by the Deed aforesaid was discharged as to the said *Vincent Corbet*, by his Intermarriage long before the Death of his said Father.

This Court ordered a Case to be made.

The Case.

THAT Sir *John Corbet* in 1652, being Will. seized in Fee of the Manor of *Stoke* and other Lands, conveyed the same in trust for 99 Years, that out of the Profits

fits and Rents thereof the Trustees should pay to every of Sir *John*'s Children 1000*l.* apiece as should be then unmarried, or not provided for after they shall attain the Age of 21 Years; and they to pay them in Seniority as abovesaid, with Power for Sir *John* to revoke or alter any of the said Payments, with Power also to limit, appoint or sell the Premises to any other Uses or Persons: That the said *Vincent Corbet*, the eldest of the said Children, was 21, and married to the Plaintiff in 1642, and before the said Settlement, without the Consent and Privity of his Father, at which his Father was angry; and the said *Vincent* had 350*l.* with the Plaintiff in Marriage, which he spent in maintaining himself and Wife and he never had any Provision made for him other than 30*l.* per annum for seven Years, if the Father lived so long but his said Father continued the 30*l.* per Ann. to be paid to the said *Vincent* during his Life, and to the Plaintiff afterwards during the said Sir *John Corbet*'s own Life. And in 1654, the said *Vincent* made his Will, and thereby devised in these Words (*viz.*) *All my worldly Goods and Estate I thus bestow, Imprimis, If my Father Sir John Corbet dye, and leave me, his Son, any real or personal Estate, then my said Wife shall have all the said Estate*

*Construct. of
Wills - ante
100, 124, 161, 250.*

which is or shall be left me by my said Father, whether Personal or Real, and the Rents, Issues and Profits of all the said Estate I give unto my said Wife during her Life, and after her decease the Principal, if it be a Personal Estate, or the Rents and Profits of a Real Estate, to my Brothers and Sisters equally to be divided, and all the rest of my Estate in the World I give to my said Wife, and make her sole Executrix, and dies before his Father; and Sir John Corbet being requested to settle a yearly Maintenance on her for Life, she being relict of his Son Vincent, declared she was well enough provided for already, and would do no more for her; and after the said Sir John Corbet died, not having altered or revoked the said Settlement, nor any of the Payments, and in his Life made no other provision for the said Vincent or the Plaintiff than as aforesaid, and there is received of the Rents and Profits of the Premises sufficient to pay off Sir John Corbet's Debts, and 1000 l. and upwards, but not sufficient to pay to each of the said Children in the said Settlement, and who were unmarried, and unprovided for at the Time of his Death 1000 l. apiece as is directed by the said Settlement.

And the Question arising upon the said Case being whether the Plaintiff, who is the

S

Devisee

Devisee and sole Executrix of the said *Vincent*, who was married and died without Issue in his Father's Life Time, shall have the 1000 *l.* limited to her Husband by the said Deed of Settlement, and the Interest since the same became payable, or what Part thereof, forasmuch as he never was any otherwise provided for by his Father in his Life Time than as aforesaid, and notwithstanding the Estate falls short to pay all Portions without Interest as aforesaid.

Personal Portion settled on the Husband out of the Profits of Lands, payable to his Wife Executrix.

ante 30, 77, 200.
post 255. &c.

This Court having considered the Case declared it was the Intention of the said *Sir John Corbet*, that his Son *Vincent*, who is first made in the Trust, should have a 1000 *l.* Portion, as well as the other Children, and therefore she being the Relict and Devisee and Executrix of the said *Vincent Corbet* ought to have the Benefit of the said Portion and Interest so limited to her said Husband, and to be paid equally in Proportion with the other Children, and decreed the same accordingly.

Good-

Goodfellow contra *Marshal*, 17 Car. 2.
fo. 546.

THE Plaintiff putting Matter in the Replication which was not contained in the Bill, and which Matter the Plaintiff knew of at the exhibiting the Bill, the Defendant pleaded and demurred to the Replication, which this Court allowed of.

Constable contra *Davenport*, 17 Car. 2.
fo. 435.

THE Bill is to compel the Defendant, being the only Freeholder within the Manor, to consent to an Inclosure. The Defendant demurs for that there are no Articles of Agreement to compel an Inclosure, nor doth charge that the Defendant is like to receive any Benefit of the Inclosure towards the Benefit of the Church, and that although he be the only Freeholder within the Manor in Right of his Church, yet the same is no ground in Equity to compel him to an Inclosure.

This Court, as to the compelling the Defendant to agree to an Inclosure, allowed the Demurrer.

The only Freeholder in a Manor in Right of his Church not compelled to inclose: *ante* 41.

1. Vern. 456.
1. Cha. C. 40. Sec.
29. Abr. 104.

Hart cont. *Hart*, 17 Car. 2. fo. 525.
18 Car. 2. fo. 332.

Personal Estate.

Remainder
ante III, 130,
2 Vol. 16, 66.

TH E Bill is touching the Real and Personal Estate of Sir *Percival Hart* deceased, the Plaintiff pretending Title and Interest in certain Lands, Householdstuff and Plate of the said Sir *Percival* in Reversion or Remainder by virtue of some Settlement made by the said Sir *Percival* in his Life time, and also by his last Will, whereby it is ordered and appointed that *William Hart*, this Defendant, should have the Use of all his Plate and Householdstuff for his Life, and that after his decease the said Plate and Householdstuff should continue to the eldest Son of this Defendant, and so to the Heirs of his Body, and so to the first, second, and third, and other Sons to the tenth Son of this Defendant, and the Heirs Males of their Bodies, as an Heirloom according to the Limitation of the Lands in the Bill, and for want of such Issue to the Plaintiffs and the Heirs Males of their Bodies; so the Bill is to discover the Plate and Householdstuff, and that the Defendant may put in Security to leave the said Plate or Householdstuff or the Value thereof, at the Death of the Defendant according to the Will.

The

The Defendant demurred for that the Plaintiff having but a Possibility of a Remainder which is void in Law, hath no ground or colour of Relief for the same either in Law or Equity, or to have the Defendant give Security for such Personal Estate.

The Possibility of the Remainder of a Personal Estate void in Law, and the Bill for Security of such Estate demurred to, and Demurrer allowed.

This Demurrer being argued before M. Justice *Brown* he held the same good and sufficient.

This Court referred the Matter to Mr. Justice *Archer*, who certified the Plea and Demurrer to be good.

This Court confirmed the Judges Certificate, and dismiss the Plaintiff's Bill with Costs.

Heyne contra Middlemore, 17 Car. 2. fo. 410.

THE Plaintiff and Administrator to one Partner sueth the Copartner for an Account of the Intestate's Share, which this Court accordingly decreed.

Partner. Account. ante 50.

Inglet contra Vaughan, 15 Car. 2. fo. 476.

THAT one *Horwel* having arrested the Defendant upon a Commission of Rebellion at the Plaintiff's Suit for the Breach of a Decree, and imprisoned him for six Weeks in the said *Horwel's*

Commission of Rebellion.

House and other places, and refused to take Bail for the Defendant's appearance to answer the Contempt, and the Defendant had by Order of this Court entered his appearance upon the said Arrest by his Clerk in Court.

Bail may be taken upon a Commission of Rebellion for the breach of a Decree.

*229. Abr. 330.
to 353.
ante 57.*

It was referred to the six Clerks to certify whether upon a Commission of Rebellion for the Breach of a Decree, Bail ought to be taken or not, who certified that Commissioners on a Commission of Rebellion may either take or refuse Bail at their Discretion, but in Case they refuse then they ought to bring the Party up to the Court without delay, and that Bail was offered.

This Court on reading of a Precedent in the like Nature made in the Lord *Elfemere's* Time, ordered that the said *Hormel* stand committed to the Fleet for his Abuse, and to pay to the Defendant his Costs and Charges sustained by his Imprisonment to be taxed by a Master.

Ismoord cont. *Claypool*, 18 Car. 2. fo. 597.

Time enlarged for the performance of a Decree for the Redemption of a Mortgage.

ante 253.

THIS Court (upon Motion made by the Defendant) ordered that notwithstanding the signing and inrolling of the said Decree, the Defendant shall have six Months longer time to pay the Mortgage Money, Interest and Costs.

I

Gore

Gore cont. *Blake*, 18 Car. 2. fo. 353.

THAT *William Gore* being seised of Lands made his Will, and thereby appointed the yearly Profits of all his Lands over and above what was given to his Wife should for the Term of 15 years be disposed, imployed and improved by his Wife, whom he made Executrix, for the Benefit of the Persons in the Will named for the payment of their Legacies; and after the Expiration of the said 15 years, gave all his Lands to the Plaintiff *Gore* and his Heirs Males That after the Testator's Death, *Elizabeth* his Wife received the Profits two Years, and married the Defendant *Blake*, and they received the Profits till 1661, at which time *Elizabeth* died, and after the Defendant *Blake* received the Profits: That the Plaintiffs *Singer* and *Hammond* being Heirs at Law claim the Interest of the Premises during the 15 Years, and the Overplus of the Profits after the Debt and Legacies paid, the Defendant *Blake* claims the same in Right of *Elizabeth* by Vertue of his Marriage, the Defendant *Kent* claims the same as Executor to *Elizabeth* under an Agreement made before the Marriage with *Blake*, and that she should have

1 Chancery Cases, 98.
The Profits of Lands devised for 15 Years to pay Debts and Legacies Devisee marries and dies, her Husband shall have the Overplus and not the Heir.

1. *Salk.* 354.
2. *Ventr.* 359.
Mss. Sq. 21, 22.
2. *Cha. C.* 115.

power to make a Will, and by Agreement to receive the Profits.

Now the Question being to whom the Lease of 15 years and the Overplus of the Rents and Profits belong, whether to the Plaintiffs *Singer* and *Hammond*, as Heirs at Law, or to the Plaintiff *John Gore* to whom the Remainder is limited, or to the Defendant *Blake* by Survivorship, who married with the Executor, or to the Defendant *Kent* her Executor who hath taken Administration *de bonis non* of the Testator *William Gore*.

This Court, with the Judges, were clearly of Opinion, that the Overplus of the Rents and Profits of the Premises, after Debts and Legacies paid, during the 15 years belonged to *Elizabeth* the Testatrix, and it was the intent of the Testator *William Gore*, her former Husband, by his Will that she should enjoy the same, and receive the Surplusage of the Rents and Profits during the said 15 Years, and since her Death, to the Defendant *Blake* and *Kent* as under her Right; and this Court dismiss the Plaintiff's Bill.

Glide cont. *Wright*, 18 Car. 2. fo. 633. *ante* 30, 254, *post* 66.

THE Testator left 1200*l.* in Trustees Hands to be paid to the Plaintiffs or to the Survivor of them at 18 Years of Age or Days of Marriage, which first happens, the Defendants the Trustees refuse to pay Interest in the mean time towards the Maintenance of the Plaintiffs, because none is expressed, nor any Notice taken or direction given what shall become of the Interest.

Portions left in Trustees Hands for Children, tho' no mention of Interest, yet the Trustees decreed to pay Interest.

See y. next case

This Court decreed the Defendants do from time to time henceforth pay to the Plaintiffs for their Maintenance the Interest, Profits and increase of the said 1200*l.* until the same becomes due, together with all Arrears of Interest.

Hawtre cont. *Dominam Trollop*, 18 Car. 2. fo. 357. 19 Car. 2. fo. 131.

THE Suit is to have an Account of the Profits of Lands and Testamentary Estate of Sir *Tho. Trollop*, Father of the Plaintiff *Jane Hawtre*, and that she may have an equal share thereof with the younger Children of the said Sir *Thomas*, who having Issue by Dame *Hester* his first Wife, Sir *William Trollop*, *Anne Trollop*, and the Plaintiff *Jane*, and by Dame *Mary* his second

Portions for
younger
Children to
be raised out
of the Profits.

1. *Salk. 155.*

1. *Vern. 35A, ABA,*

476. *He. ante 265.*

Mac. 27. 9. 2.

29. 2tr. 335, 336.

do.

cond Wife, *Thomas Trollop*, *Mary* the Wife of the Defendant *Hide*, and the other Defendants, did by his Will in 1649 give 1000 *l.* to the Plaintiff *Jane* to be paid her at her Marriage, and devised the Rents of divers Lands and his Personal Estate to raise Portions for his younger Children, and every of them to have equal Portions, with a Proviso, that what any of his Children have formerly received of him or the Feoffees, to be Part. That in the year 1651, *Jane* was married and had 1000 *l.* Portion, and about March following, the said *Sir Tho.* made a second Will, and devised Lands, together with his Personal Estate to his Executors, for the Use of his Children (not disposed of nor provided for) to raise Portions for them; and when the said *Thomas* attained the Age of 22 Years, and *James* 21 Years, then a Dividend to be made, and every Child (*William* and *Thomas* excepted) to have an equal Part, deducting what they had formerly received, and made one *Hall* and *Clithero* Executors, and the Defendant Dame *Mary* to have an equal Power with them, during her Widowhood; and the said *Sir Thomas Trollop* before and after the Time of making the said second Will, that the Plaintiff *Jane* and *Anne*, the late Wife of the said *Hall*, one other of the Daughters by his first

Wife

Wife should have an equal share with his younger Brother, allowing for Part what they have received of him upon their Marriage, and by a Paper Writing of his own Hand written after the making of his second Will, and found with his Will after his Death so declared; so the Plaintiff's Bill is to have an equal share with the younger Children, deducting the 1000 *l.* received as aforesaid.

The Defendants insisted that Sir *Tho.* by his second Will, all of his own Hand writing, devised the Rents and Profits, and Testamentary Estate for the benefit of his Children, not disposed of nor provided for, to raise them Portions and to bring them up, and explained his Mind as to the Words (*Not disposed of nor provided for*) should not exclude his Son *James* from his Part of the Estate; from whence the Defendant's Counsel inforced that the Plaintiff *Jane*, whose Name is not at all mentioned in the second Will, is absolutely excluded from having any Part of the Testamentary Estate by force of the second Will, she being before the making thereof disposed of in Marriage, and received 1000 *l.* from her Father, and so could not be intended to be undisposed of or unprovided for, nor yet one of the Children that was to be brought up: And that the Paper Writing aforesaid ought

ought not to be deemed as a Declaration for the disposing of any Part of the Estate to the Plaintiff *Jane* contrary to the express Words of the Will, the said Paper Writing being only a draught of a Letter not sealed, and was endeavoured by the Plaintiff to have been proved as a Codicil in the spiritual Court, where Sentence was pronounced that it was no Codicil: And the Defendants insist that the said Paper Writing by all Circumstances was made before the second Will and so ought not to be countenanced or alter the same, nor to be a ground for a Decree that the Plaintiff should come in for an equal share of the Testamentary Estate, directly contrary to the express Words of the second Will.

29. of br. 402, to 404.

A Paper writing left with a Will and written after it, though no Codicil, yet a Declaration of the Intention, and so decreed.

2. ante 165.

The Plaintiff insisted that the Paper Writing was writ after the making of the second Will, and was found in the Box after the said *Sir Thomas Trollop's* Death laid between both the said Wills, and although the said Paper doth not amount to a Codicil, yet it is a good Declaration of the said *Sir Thomas* to his Executors that his Intention was, that the Plaintiff *Jane* should have an equal share of the Rents and Profits and Testamentary Estate of the younger Children.

The said Paper Writing was referred to Law whether it was written and made before or after the second Will.

A Verdict passed for the Plaintiff that the Paper Writing was written after the making of the second Will of the said Sir Tho. Trollop.

This Court, with the Assistance of the Judges, upon reading of the second Will of the said Sir Thomas Trollop, whereby he declared that for an Explanation of his Mind as to the Gift to his Children was that equal Dividend should be made amongst them, and every Child, *William* and *Thomas* excepted, should have an equal Part, deducting what they had formerly received or had been paid to or for them; and also reading the said Note confirmed the Master of the Rolls's Decree, which was, that the said Lady Trollop should account for the Rents and Profits of the Lands, and the Testamentary Estate of the said Sir Thomas Trollop devised by him as aforesaid according to the Will (except the Adventure in the East-India Company) and the Master to make a Dividend of the rest of the Estate, and the Plaintiff *Jane* bringing the 1000*l.* Portion, which her Father gave her, into hotch-potch with the rest of the Estate, so to be accounted for, she the said *Jane* should have her equal share and

ante 266 &c.

The Will is, younger Childrens Portions to be raised out of the Testamentary Estate; one was preferred in the Testator's Life time, yet decreed she shall have her share, she bringing her Portion into Hotch-Potch with the rest of the Estate.

and Proportion of the said Estate with the rest of the younger Children.

*Walker cont. Sydenham, 18 Car. 2. fo. 431.
19 Car. 126.*

Trust.

*ante, 4, 11, 13, 30, 51,
52, 101, 110, 126, 166,
216, 245. &c. 265.
Q. 267. 379. to
A. 100.*

THE Bill is to compel the Execution of a Trust created by *Alexander Portrey* by Deed in 1642, whereby the Premises were to be sold to pay the Debts of the said *Alexander*, and the Remainder of the Money to be divided into three Parts, whereof *Katherine* the Wife of the said *Alexander* to have one third, and *Jane* and *Mary* her Daughters the other two Parts, and to have several Sums paid to the Plaintiff, which were disbursed by the said *Katherine* about the Premises and Payments of Debts, and otherwise, the Plaintiffs claiming the same as Executors of the said *Katherine*, who was Executrix of *Hurlstone* her late Husband; the said Defendants *Jane* and *Mary* aforesaid, being Coheirs of the said *Katherine*, deny they know any such Trust, and insist that the said *Katherine* in her Answer to a former Bill exhibited against her by *Owen Feltham* and his Wife had sworn the Deed aforesaid was not upon any such Trust, but was made without any Consideration and meerly to preserve the Estate from hazard.

This

This Court dismiss the Bill against the Executors and Legatees, in regard the said *Katherine* had sworn in a former Answer as aforesaid, but the Cause being reheard with the Assistance of Judges, the Plaintiffs the Executors and Legatees insisted, that what the said *Katherine* had sworn was to a Bill exhibited against her by the said *Feltham* to have a third Part of the Premises, and with whom she was very much displeased, and used her utmost Endeavour to hinder and keep him from the Estate, and she only swore that the said Deed of Trust was (as she believed) made to preserve the Estate from Sequestration, and that she might make Use thereof or not as she saw Cause; and for other Reasons now expressed the Plaintiffs insist the Bill ought not to be dismissed, especially after two Tryals at Law, and both found for the Plaintiffs that it was a good Deed of Trust.

The Defendants insisted that at the said Tryals no Trust was proved nor to be proved by the Issue, but only the sealing and delivery of the Deed of Trust, and insist also that there ought not to be any Execution of the said Trust after 22 Years, the said *Katherine* always opposing the same, and refusing to consent thereto; and again insisted upon *Katherine's* former Answer as aforesaid, and if the said *Katherine*

Bill dismiss
upon the
Answer of
the Defen-
dant deny-
ing a Trust.

2. Vol. 22, 65,
161. Sec.

therine had been living, she could not have been relieved upon the said Trust against her own Oath, and cited a Precedent in this Case, between *Edwards* and *Whitehorne* to the same purpose, and the Plaintiffs claiming by her Will only are in the same Condition with her, and cannot set on foot or be relieved upon the said Trust.

This Court declared they were not satisfied with the Dismissal of the Plaintiffs Bill after two Verdicts, and conceived the Plaintiffs ought not to be determined by the said *Katharine's* Answer, her Business being then but to disturb and obstruct Mr. *Feltham*.

This Cause was re-heard by the Lord Keeper *Bridgman*, and he confirmed the Dismissal of the first Hearing and set aside the Lord *Clarendon's* Order, and was quite of another Opinion to the whole Matter therein.

Greenwood cont. *Hare*, 18 Car. 2. fo. 528

Copyhold.

2. Hare.

2. Vol. 210.

Cont. 96.

THAT *John Hare*, the Defendant's Father did purchase part of the Manor of *East Carry* for the Lives of himself and his two Sons, *Richard* and *William Hare*, and he alone paid the Fine for the same to the Lord of the said Manor, and by Virtue thereof the said *John Hare*

Hare became intituled to the said Premises, and according to the Custom of the said Manor, had good power to surrender the same, as well for the Lives of the said *William* and *Richard*, as for his own Life. That 15 Car. 1. the said *John Hare* covenanted and agreed by Deed with the Plaintiff's Father to surrender and assign all their Title and Interest in the said Copyhold Premises to the said Plaintiff's Father, his Heirs, &c. and the said *John* soon after and before the making of any surrender died, having made his Will and *Agnes* his Wife Executrix; and soon after the said Plaintiff's Father died, having made his Will and his Wife and the Plaintiff Executors; and since the said Wife the Plaintiff's Mother died, and the Plaintiff being Survivor ought to have the Benefit of the said Deed, and Agreement made with the said Defendant's Father; and to have the said Copyhold Premises surrendered to the Plaintiff's use according to the Covenant aforesaid, and to compel the Defendant to surrender is the Scope of the Bill.

The Defendant insists that he ought not to be concluded by the said Agreement or Contract, the Surrender not being made in the Defendant's Father's Life time, and insisted they were neither Parties

T

ties

ties nor privy to the said Contract or Agreement, so as the same ought not in any sort impeach the said Defendant's Estate for Life in the said Premises, and the Defendant hath entred and brought his Action for Recovery of the Premises as by Custom is warranted in Case the said Defendant's Father had surrendered in his Life time.

Decree that a Copyhold for Life shall be surrendered (the Purchase Money having been paid) according to Agreement.

This Court, forasmuch as the Defendant insisted that the Surrender being not made in his Father's Life time, and so ought not to oblige the Defendant to surrender the said Premises being a Copyhold for Lives and not a Copyhold in Fee, being satisfied of the said Agreement, Purchase and Payment of purchase Money by the said Plaintiff's Father, and that by the Custom the Defendant's Father could have surrendered all the three Lives, doth leave the Defendant to Precedents touching the said Point, and the distinction between the Copyhold Estates holden in Fee or for Lives, where Relief hath been given in such Case of a Copyhold for Life, it being offered by the Defendant's Council that it ought to be made against a Copyholder in Fee; and if the said Defendant shall not find Precedents, then it is decreed that the said Agreement be performed, and that the Defendant do surrender the Premises to the Plaintiff's use according

according to the Custom, and an Injunction for quiet Enjoyment.

No Precedents could be found.

Jenkins contra Keymeys, 19 Car. 2.
fo. 406.

THE Bill is to have the Benefit of a Settlement.
Mortgage of Lands whereof Sir 1 Chancery
Nicholas Keymeys and *Charles Keymeys* his Cases, 103.
Son, the Defendant *Sir Charles's* Father 1. Salt. 416.
and Grandfather were seized in Fee, Max 29. 71. 8c.
who 1 Jan. 18 Car. 1. mortgaged the
Premises to the Plaintiff's Father for 2000 l.
notwithstanding added a Deed Tripartite
1 April 18 Car. 1. made by the said Sir
Nicholas and *Charles Keymeys* whereby the
Defendant claims the Premises as the
Heir in Tail of the Body of the said
Charles, for that it is a meer voluntary
Conveyance to the said *Charles* without
Consideration, and for that there was a
Proviso therein that *Sir Nicholas* should
have Power to charge the Premises with
2000 l. at any Time by Will or Deed, and
the Conveyance made to the Plaintiff's
Father ought to be, and is a good Execu-
tion of the Power according to the said
Proviso; and in the Deed of Mortgage
to the Plaintiff's Father there was a Co-
venant for the Payment of 2000 l. by *Sir*
Nicholas and *Sir Charles Keymeys* to the
T 2 Plaintiff's

Plaintiff's Father ; and that the subsequent Deed 22 Oct. 20 Car. 1. mentioning the Deed Proviso and Power doth not appoint any Person to levy the 2000 l. and to pay Debts, and Sir Charles the Defendant's Father hath not paid near 2000 l. of the said Sir Nicholas's Debts such as this Court will allow of and prefer before the Plaintiff's Debts.

The Defendant says Sir Nicholas and Sir Charles were not seised in Fee of the Premises, for that Edward Keymeys Uncle of Sir Nicholas being seised thereof by Will, 8 Jan. 5 Jac. devised to David Keymeys, Son and Heir to Rees Keymeys, the Premises during Life, and after to his first Son and Heir Male of his Body, with Remainder to the said Nicholas for Life, and after to his first Son and the Heirs Male of his Body, and Sir Nicholas, the said David dying without Issue, entred, and was seised for Life, Remainder to his first Son and the Heirs Males of his Body with Remainder over, and on Marriage of Charles his Son the Plaintiff's Father with Blanch the Daughter of Lewis Mansel, and in consideration of 2500 l. Portion a Fine and Recovery was had of the Premises, and the said Deed Tripartite was to the Use of the said Sir Nicholas Keymeys for Life, Remainder to the Use of the said Charles afterwards Sir Charles

Charles the Defendant, *Sir Charles* his Father, and the Heir Males on the Body of *Blanch*, Remainder to the Body of *Sir Charles* (which the Defendant is) and so doth not claim by a voluntary Conveyance, the Portion and Marriage of *Sir Charles* being a Consideration extending to all his Issues, and in the Tripartite Deed there was a Proviso for the said *Nicholas* to charge the Land with 2000 *l.* as aforesaid, who charged the same accordingly, and not long after the said *Sir Nicholas* died indebted 2000 *l.* at least which *Sir Charles* the Defendant's Father paid, so as the Lands ought not to be subject in Law or Equity to the Plaintiff's Demand, the rather for that the Plaintiff endeavoured to recover Possession in the Exchequer; but a Verdict was found for the Defendant's Title as Heir Male of his Father, and enjoyeth both by the Will of *Edward Keyneys* and the Settlement by the Tripartite Deed; and the Defendant insists that the 2000 *l.* was not borrowed by the said *Nicholas* and the said *Charles*, but by the Marquis of *Worcester*, and they only secured it as aforesaid.

The Plaintiff's Council agreeing this Case to be against the Plaintiff, the Court dismiss the Bill.

What shall
be said not a
voluntary
Conveyance.

ante 150, 163,
173.

4 *Leon. Rep.* 8.
2 *d Vent.*

350.

1 *Lev.* 238.

1 *Chancery*

Cases, 241.

2 *d Chancery*

Cases 30.

*Gerrard contra Stanley & al', 19 Car. 2.
fo. 509.*

*Jurisdic.ⁿ
Max. 29.26c.56.*

THE Bill is that the Defendants may discover their Title to certain Lands in the County of *Lancaster*, which the Plaintiff claims as Heir Male of *Miles Gerrard*, the Defendants having Possession claim by a Conveyance to one *John Davis* of *London*, and also a Title to the Defendant *Margaret* as Heir at Law to the said *Miles Gerrard*.

The Defendants plead the Jurisdiction and Privilege of the Counties Palatine of *Chester* and *Lancaster*, and that the Lands lie in the County Palatine of *Lancaster*, and that the Defendant by several Acts of Parliament ought not any where else to be impleaded.

Jurisdiction
of the County
of *Lancaster* plead-
ed, and the
Plea ruled
good as to
the Title and
Possession of
Lands and
Profits.

This Court upon reading of a Precedent produced by the Plaintiff against the Jurisdiction of the County Palatine of *Chester*, wherein was also cited several other Precedents to the purpose; his Lordship notwithstanding the said Precedent declared the said Plea to be good as to the Title and Possession of the said Lands or for any Accounts of the Profits.

ante 106, 140, 103. - Vol. 2 - 196, 197.

Dominus Gorge contra Dillington, 19 Car. 2.
fo. 730.

THAT Sir *W. Lisle* mortgaged the Mortgage.
Inheritance of the Manour of *Ap- 2. Max. 29. 19.*
pleford to Sir *R. Dillington*, the Defendant's *2. Ch. C. 5, 04.*
Grandfather, by way of Lease and Re- *1. Ch. C. 74. 297.*
lease for 1000 *l.* in which there was a Pro- *2. Kent. 349.*
viso, That if the said Sir *William Lisle* *2. Gal. 449.*
his Heirs or Assigns did not pay to the *Vern. 36.*
said Sir *Robert*, his Executors, Admini-
strators or Assigns, the Sum of 1300 *l.* at
Days therein limited, then the said Sir *Ro-*
bert and his Heirs to enjoy the Mortgaged
Premises, with a Covenant for farther
Assurance to the said Sir *Robert* and his
Heirs, upon non-payment of the said
Money ; which said Mortgage was forfeit-
ed in the said Sir *Robert* the Grandfather's
life-time, whereby he had an absolute E-
state of Inheritance therein, to him and
his Heirs ; and thereupon the Defendant
since the said *Robert* the Grandfather's
Death (being his Heir) hath entred on the
Mortgaged Premises, and hopes to enjoy
the same, there being a large personal
Estate and no Debts.

But the Plaintiff the Executor insisted,
that though the said Mortgage was made
to the said Sir *Robert* the Grandfather and
his Heirs, yet it ought to be accounted

part of his personal Estate, being made payable to him, his Executors, or Administrators, and a Covenant on the Mortgagor's part to pay it to his Executors or Administrators, not mentioning his Heirs, not forfeited in Sir Robert's life-time, and the Interest duly paid to the said Sir Robert the Grandfather in his life-time, and the Heirs of the Mortgagor still in possession.

The Defendant insists it is proved the Mortgage was forfeited in Sir Robert the Grandfather's life-time, and therefore where there is a contest of this Nature between an Heir and an Executor or Administrator, and no Debts in the Case, and if there were, yet where there is no defect of Assets, as there is not any in this Case, this Court doth never take it from the Heir, and producing a Precedent of this Court with the like Nature of this Case.

Mortgage in Fee, and the Money made payable to the Executors or Administrators, and a Covenant to pay the Money accordingly, to be accounted part of the personal Estate.

This Court conceived a clear difference between the Cases, the Money being only made payable to the Executor or Administrator, and not to the Heir, and a Covenant to pay the same to the said Sir Robert the Grandfather, his Executor or Administrator, and the Interest Money paid during the Grandfather's Life, and no Entry made by the Grandfather, and the principal Money not payable till Novemb.

1668.

Max. 29. 14. c. 12.
Hil. 21. c. 1.

1668. but the Heir of the Mortgagor still in possession, and the Interest Money paid since the Grandfather's Death, and being fully satisfied, that what hath been already received by the Defendant, on the said Mortgage, ought to be accounted as part of the personal Estate, and so ought to go to the Administrator of the Grandfather, and not to the Heir, and doth Decree the same accordingly, and the Defendant is to convey the said Mortgaged Premises unto the Plaintiff and his Heirs.

And touching the 250*l.* secured by a Lease for Years, in the Name of one *Tucket*, in Trust for Sir *Robert* the Grandfather; the Defendant insisted that a Lease was made by the said Sir *Robert* the Grandfather, of part of his Lands of Inheritance to one *Coleman* for years for a Fine of 250*l.* for securing whereof the said *Coleman* did Assign all his term to the said *Tucket*, in which Assignment there was a Proviso for Payment of the Money to the said Sir *Robert*, or to his Heirs, Executors or Administrators, and the said *Tucket* accordingly declared the Trust for the said Sir *Robert*, his Heirs, Executors and Administrators, and hath since the Death of the said Sir *Robert* the Grandfather, surrendered the said Lease to the Defendant, as Heir according to the said Trust,

Trust, the said *Coleman* not having paid his said Fine, and the Assignment being absolute in Law, and so the Defendant ought to enjoy the said Lands; without any account for the said Fine; but the Plaintiff insisted, and so it appeared to the Court, that *Coleman* being indebted 250 *l.* for a Fine as aforesaid, secured the Payment thereof by Assignment of the said Lease to *Tucket*, under a Provision to pay 250 *l.* and in Trust for the said Sir *Robert* the Grandfather, his Heirs, Executors or Administrators; so the Plaintiff insisted that if *Tucket* had surrendered to the Defendant, it is a breach of Trust in regard it being a Chattel it belongs to the Administrator, and not to the Heir, and the Money secured belongs to the Plaintiff, and if any Surrender was made it was after the Death of the said Sir *Robert* the Grandfather, or the Defendant's Administration granted to him *Pendente lite*.

Surrender of
a Lease. &c.

2.1. Vern. 195,
196. 2. Che. C. 150.

But the Defendant's Council insisted that the Surrender was made before the granting the Administration *Pendente lite* and produced a Surrender made by *Tucket* in September, 1665.

Lease to go
to the Admin-
istrator, and
not to at-
tend the In-
heritance.

This Court declared, that in Case Administration to the Defendant was before the Surrender, that then the Lease to *Coleman* cannot be thought to wait on the Inheritance.

Max. 29. 72. c. 10.

heritance, but ought to go to the Administrator for the Defendant had it as Administrator, and so took the Surrender as a Trust, and therefore in such case ought to pay the 250*l.* with damages from the time of the Surrender, or else make a new Lease to the Plaintiff of the Premises surrendered by *Tucket*, as effectual in Law as that which was made to *Coleman*, for the same Term, same Covenants and Rents as in the former Lease, and the Defendant to account for profits by him received.

Pit contra Pelham, 19 Car. 2. fo. 875.
21 and 22.

THE Case is, That *William Shirley* in 1650, being seized in Fee Simple of Lands, upon his Marriage with *Jane Hecke*d for her Jointure, settled the said Premises to the use of himself and *Jane*, and the Heirs of their two Bodies; and for want of such issue, to the right Heirs of the said *William* for ever. That in 1657, the said *William* having no issue made his Will, and as to so much thereof as concerns the Matter in question, Devises in these Words, (*viz.*) *I appoint my dear Wife my sole Executrix, my Land at Blandford, which is my Wive's Jointure, I do confirm unto her, and after her decease I do appoint it to be sold, and the Money that*
is

S. C. 2. Freeman.
135. 1. Cha. Cal. 176.
Constructi- *T. Jo. 25.*
on of a Will. *S. Lev.*
1 Chancery 304.
Cases, 176.
19. Abr. 265. c. 3.
Max. 19. 57.
ante 160. &c.
2. Chak. 29, 30,
07. 1. Cha. C.
177. &c.

is made thereof to be divided by equal Portions, amongst these four, namely one part to be disposed of by my Wife, the other three parts are my Nephews, William Major, Ezra Shirley, and Jonadab Savage; I give to my Cousin Roger Higham 20 l. and in case any of my three above named Nephews shall die before the decease of my Wife that then my Cousin Roger Higham shall have that portion of Money, which upon the selling of the Land at Blanford should have fallen to that Nephew. And the said Will. Shirley, five days after the said Will made, died without Issue, and Jane his Wife proved the said Will and possessed the said Premises, and afterwards demised the same to the Plaintiff Pit, and the said Ezra Shirley died in the Life time of the said Jane, and the said William Major in 1664. for 125 l. sold the said Premises and his Right and Interest therein, and all his part and share of Money which he, his Executors, &c. might claim, or have out of the said Money to be raised by such Sale by Virtue of the said Will or otherwise, and covenanted for further Assurance; and the said Jonadab in like manner sold his Interest to the said Pit, and the said Roger Higham being intituled to a fourth part of the Premises by the Death of the said Ezra Shirley sold in like manner all his Interest to the said Plaintiff

Pit,

Pit, and with like Covenants as the said
other Plaintiff's had done, and the said
Jane for 300 *l.* secured to her by the said
Plaintiff *Pit* payable after her Death,
sold all her Interest in the said fourth
Part of the Inheritance of the said Lands
expectant after her Death, and her share
of what Money should be raised by the
Sale thereof, and covenanted for fur-
ther Assurance; and in 1666, the said
Jane died having made her Will, and the
said *Roger Higham* and one *Harris* Exe-
cutors, who proved the said Will, and re-
ceived the said 300 *l.* so that according to
the said *Will. Shirley's* Will, the said Lands
ought to be sold, there being a Trust raised
thereupon for the Benefit of the said
Major, Savage and *Higham*, and the As-
signee of the said *Jane*; and thereupon
the Plaintiff *Pit*, who is a Purchaser of
all the other Plaintiffs interest as afore-
said, and is also Assignee of the said *Jane*,
seeks to have the Defendant *Pelham* and
Mary his Wife, and *Mabel Shirley* (which
said *Mary* and *Mabel* are Sisters and Co-
heirs of the said *Ezra Shirley*, who was
the Son and Heir of *Ezra Shirley*, Bro-
ther and Heir of the said *William Shirley*)
convey the said Premises to the Plaintiff
Pit and his Heirs, the other Plaintiffs
offering to join with them therein.

But

But the Defendants insist that if such Will was made, yet the said Defendants Co-heirs not being therein appointed to sell or convey the said Premises, nor any person by the said Will appointed particularly to sell the same, and the Lands not devised by the Will, but appointed to be sold; therefore the said Lands are well descended to the said Coheirs, and they are neither in Law or Equity obliged to sell or convey the same, and submitted to the Judgment of this Court to do as this Court shall direct, in Case the Will be a good Will; and also insisted that there was as good Equity in this Case for the Heir, as for the Devisees, and the Lands being descended on the Defendants as Heirs, they hope this Court will not compel them to disinherit themselves, and that the Plaintiffs Purchase was after Suit commenced depending in this Court for the same Thing.

Purchase pendente lite.

Max 29.6.2.2. 53
2.1-62.2.2.

The Plaintiffs insisted, that the Will was a good Will at the Death of the said *W. Shirley*, and that the Lands were charged with a Trust to be sold, and that no Act since can invalid the same, and that the said former Bill was only to preserve Testimony for proving the said Will, and the Plaintiff *Pit* being a real Purchaser for the Life time of the said *Jane*, he hath proper and equitable Suit in this Court

to have the said Will performed and the Trust executed.

This Court ordered a Case to be made upon the said Will, taking this to be a Case of great Consequence and Weight in the Precedene of it, and admitting the said *William Shirley* was seized in Fee, and made such Will, and that the said *Ezra Shirley*, Brother of the Defendants *Mary* and *Mabel*, died in the Life time of the said *Jane*, and that the Plaintiff *Pit* made such Purchases as aforesaid.

This Court having perused Precedents in this Case, and advised with the Judges hereupon, declared his Opinion to be for the better clearing of the Cause for his determination, and ordered that a Tryal should be had at Law in a feigned Action by Wager, Whether *Jane* the Re-
lict and Executrix of the said *Will. Shirley* Lands ap-
had Power, and could by the Will have pointed to be
made Sale of the Lands in question; and sold by Will
also in the next place, whether a Sale by to raise Le-
her Executors (admitting such Sale to be gacies, but no
actually made) be a good Sale. And in pur- Person ap-
suance thereof a Tryal hath been had up- pointed to
on the point aforesaid, and a special Ver- sell a void
dict thereon found, and several solemn Will, and
arguments and Debates thereof have been decreed for
before the Judges of the Common Pleas, the Heir at
who have given Judgment therein for the Law against
Defendants, and the Cause coming again to a Purchaser. *L*
be

be heard on the Equity reserved before the Lord Keeper assisted with the Judges and they having considered of the Precedents offered by the Plaintiff and compared the same with the Case in question, find a great difference between them and this Case upon the Circumstances thereof.

This Court upon the whole Matter, the Will in question being adjudged void in Law in the very Constitution thereof, saw no Cause or Colour to make good the same in Equity, and dismiss the Plaintiff's Bill; but declared this should not be a Precedent.

But the Purchaser relieved in Parliament, and order the Heir at Law to convey to him.

The Plaintiff appealed to the Lords in Parliament, who adjudged and resolved that the Plaintiffs ought to be relieved and ordered the Lord Keeper to set aside the said Dismission, and adjudged the Defendants, the Heirs at Law, to convey the said Premises to the Plaintiff *Pit* and his Heirs; which this Court in Obedience to the said Order, ordered accordingly.

Note Purchasers are to be favoured in Equity. - Eq. Abr. 353, 354, 355.



ARGU

16. Jan. Feb. 1794.

There is a manuscript of the following argument in a folio volume, formerly a part of Lord Somers's Collection, & now belonging to ~~Mr. Justice~~ Henry Dodrell Esquire; & there the title is as follows. Art. of Vindication of the Judgment of King James in the Case of the Jurisdiction of the Court of Chancery, that the Court of Chancery should not desire to give Relief in Equity, notwithstanding any Proceedings at the Common Law, contrary to an Opinion lately published after the supposed Author's death, wherein it is

ARGUMENTS

Proving from *Statute, 27. E. 3. cap. 1. & 4. H. 4. cap. 23. are discovered. Proving from Indicia et nullo fominibus agno & equum est.*

ANTIQUITY

THE

Dignity, Power and Jurisdiction

OF THE

COURT of CHANCERY.

A Question being raised in the Court of King's Bench, Whether after a Judgment given at the Common Law, The Chancery could in any case give Relief in Equity? Or, whether it were not debarred thereof by the Statutes of 27 E. 3. cap. 1. and of 4 H. 4. cap. 23. King James taking notice of that Difference, (and taking himself to be the Judge of the Jurisdictions of his Courts of Justice) did seriously advise thereupon with his Learned Council, upon whose Opinions

*Key. case of
King v. Standish
1. Lev. 241. Mich.
22. Chr. 2. Rot. 810.
By 3. Earl of Oxford
Case 10. 3.

29. Abr. 129,
130.
See 3. Inst.
122 to 124.

for the harm-
live of the
contr. every be-
Queen, Lord Ch.
Blackstone &
Lord Ch. J. Coke
about the jurin-
dict. of Chanc-
ry after judg-
as law, for the
Life of Lord Ch.

The Rev. Mr. Egerton
for the 2^d ed. in 8^{vo}
printed in 1794
p. 35. & circ. in 1794

Egerton was enlarged
from the 1st ed. of 1790
graph. Pontanus & print
by X

The Jurisdiction of the Court

and Certificate, he did give Judgment for the Chancery; and accordingly all things were in Peace. The Chancery Court went on in the times of the Lord *Ellesmere*, Lord *St. Albans*, Lord *Conventry*, and all others that were Lord Keepers of the Great Seal of *England* ever since (as it had formerly done.) And the then Lord Chief Justice of the King's Bench did never Question that Judgment, although he lived many years after, and was of four Parliaments, wherein he had both Opportunity and Power to have done it, if he had not known that Judgment to have been given according to Justice, and the Laws of the Realm; but he desisted, and did openly profess before the Lords of the Privy Council, That he would not maintain a Difference between the two Courts, nor bring it into Question, whereof Entry was made in the Council-Book 26 Junii, 1616.

Notwithstanding the Publisher of his third and fourth Books of the Institutes finding (as it should seem) some old Notes collected, when the Question was on foot and undecided hath taken the Boldness to print them long after the Author's Death, and therein hath made him to question all again by mentioning many Cases, wherein divers Persons had been indicted in *Premunire* upon the Statute of 27 E. 3.

for seeking Relief in Chancery after Judgments given between the Parties at the Common Law, and concluding with [See a Privy Seal to the contrary, 18 Julii 1616, obtained by the Importunity of the Lord Chancellor, being vehemently afraid: *Sed judicandum est legibus*, and no Precedent can prevail against an Act of Parliament. And besides, the supposed Precedents (which we have seen) are not Authentical, being most in torn Papers, the rest of no Credit] Thus far he, wherein,

To omit how prejudicial 'twould be to the whole Kingdom, if that Rule were infallible, That no Precedent or Prescription. Usage or Custom, (as some have said) should prevail against an Act of Parliament, and the Distractions it might make in Men's Inheritances, if other Statutes should be so stood upon: And to omit likewise the little Respect used to his said Majesty's Judgment, and the little Charity shewed to the Lord Chancellor (dead long before) that he should be said to have procured that Judgment by Importunity, being vehemently afraid (though 'tis more probable the Fear was elsewhere;) yet seeing that the Authority of such an Author may have given occasion (to some) not only to question but to censure that Judgment as if it were of dangerous Consequence, because the

Cokes's 4th
Inst. 86.

The Jurisdiction of the Court

Judges were not called to it; and that the King's Learned Council (who made that Certificate to his said Majesty) were great Practicers in Chancery, and spake for their own Ends, That the Chancery (when the Statute of 4 H. 4. was made) was no Court to relieve in point of Equity: And the more ordinary the Chancery was, the more Mischief there was; and that there is no need of a Chancery, The Judges (can and) in all Ages have judged in Equity; and that the Chancery is but an *Officina* only to prepare Writs for the Common Law Courts to proceed upon, &c.

In Answer to all which 'twill be requisite to consider,

I. First, The Office, Dignity and Necessity of Chancellors and Chancery Courts anciently in other Commonwealths and Kingdoms, and with us.

II. Secondly, The Certificate of King
see p. 20, James's Learned Council to his said Majesty, with the Reasons therein expressed.

I. First in (ancient) *Rome* the Pretors had Power by the Law *Pratoria*, to supply and correct Laws, *Varro lib. 5. de ling. Lat.* And by the Law *Cornelia*, they were punished

nished if they did not judge according to Equity, *Cicero Phil. 2.*

In the Empire it was said to the Chancellor *Fasces tibi Judicium parent, & dum jussa Prætorianæ Sedis portare crederis, ipsam quodammodo potestatem reverendus assumis: And Persona tua refugium sit oppresso, infirmo defensio, præsidium aliqua calamitate concluso; sic enim proprie nostros Cancellor agit, si la- forum impia claustra solvatis, See Spe'man's Gloss. pag. 126. for which he citeth Cas- siodore, lib. 12. formul. 1. who wrote above 1200 years since.*

Besides, all Kingdoms, Commonwealths, Principalities (and Subjects also that had *Jura Regalia*) in all Ages have had their Chanceries and Chancellors. The Counties Palatine in *England* have them to this day: *Chester, Lancaster, Durham, &c.* The Earls of *Pembrook*, the Lords of *Glamorgan*, and other Lords Marchers had their Chanceries and Chancellors before the Statute of *Wales*, 27 *H. 8.*

But for the Antiquity and Dignity of the Chancery Court and Chancellor of *England*, it is observed, that *Wilfrinus* was Chancellor to King *Athelstane*, (for so he is called in a Charter granted to the Abby of *Malmsbury*; that *Turketulus* was Chancellor to King *Edward* the Elder, and to King *Edmund* and *Edred* (*Ingulphus*) *Adulphus* to King *Edgar*, *Al-*

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fius Abbot of *Ely* to King *Etheldred*, who did ordain and grant, that the Church of *Ely* should then and always hold the Dignity of Chancellor in the King's Court, *Histor. Eliens.* That King *Alfred* had a Court of Chancery, 4 *Institut.* out of the *Mirror*, *cap. 1. sect. 3.* and *cap. 5.* who saith, That 'twas ordained by King *Alfred* in Parliament, that every Man should have a Writ Remedial out of the King's Chancery, which it may be the Author of that Book (*Andrew Horn*) meant of such a Course to send for the Parties as was then used; for if he meant Writs under Seals, as they issued out of the Chancery in King *Edward* the Second's time when he wrote, clearly he was mistaken; for there could be no Writs under Seals in King *Alfred's* Days, neither he nor any of those former *Saxon* Kings using any; for Seals came in with the *Normans*. The *Saxon* Kings manner was to subscribe their Names and Crosses to Charters, *Ingulphus*, *Camden*, 444. *Selden* Titles of Honour, 785. Some have said that King *Edward* the Confessor used a Seal, and that his Chancellor had the Custody of it; but that he learned in *Normandy*, having lived long there before he was King; and then it must necessarily follow that the former Kings having no Seals, there was some other

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use of a Chancellor, and of a Court of Chancery in those Days (if there were a Chancery distinct from the King's Court which cannot be shewed:) For in those days there were no other Courts but the Sheriff's Court in the Counties, and the King's great Court *in Aula Regis*, where the Chief Justice of *England*, the Chancellor, and the Prelates and Earls were the Judges, (whence only those Remedial Writs issued) then to be an *Officina* only to seal Writs and Commissions for the Law Courts to proceed upon, when neither Seals nor Writs were used, nor any such Courts as now in *Westminster-Hall*. And what other use could there be of that Court, or what could there be to denominate them Chancellors; but (as 'tis said before of the Chancellor under the Emperors) to relieve the distressed, to defend the Weak, to be a Refuge for the wronged, and to loose the wicked Bands, wherewith the poor guiltless Man was oppressed by the Rigor of the Laws, which is a lively Description of the Office of the Lord Chancellor at this Day, and for which Cause (saith one) a Chancery was ordained.

Pasquier Recherches,
Pag. 88.

Mr. *Lambert* speaking of the Court of Chancery, saith, That whensoever this Court of Equity did first begin to be a distinct Court, the Power thereof was al-

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ways in Exercise, and by a Comparison of two Herbs, which of themselves are Poison, but mingled together do make a wholesome Medicine; he sheweth the Necessity of Courts of Equity as well as of those of the Laws: For further Proof hereof, it will be requisite, that we look higher how the Laws were administred in this Kingdom in former Times.

It is apparent that in the *Saxon Times*, the ordinary Courts of Justice, were kept in the several Counties and Hundreds where the Senator or Alderman, Greve or Sheriff, with the Bishop or his Arch-Deacon were the Judges, *Quorum alter Jura Divina alter humana populum edocet, Vid. Leg. Edgari, cap. 5. & Leg. Canuti, cap. 16, 17.* In some Cases the Bishop was the sole Judge as in *Causa fractionis fidei* (which is a case of breach of Promise, and of Trust now relieved in Chancery) *Vid. Leg. Alfredi, cap. 1.* In some Cases the Senator, &c. was sole Judge; in some Cases both were Judges; of the Bishop's Power, See *Leg. Edwardi Confessoris, cap. 3. 5, 7.* If any Man found himself aggrieved with the Judgments in those Courts, he might appeal to the King himself, *Leg. Edgari, cap. 2. Nemo in lite Regem appellato, nisi quidem domi Justitiam consequi aut impetrare non poterit, sin summo jure domi urgeatur ad Regem*

...m, ut is onus aliqua ex parte allevet provo-
to, which is plain, that the King will
believe him in Equity after Judgment,
which it seemeth was done by his Chan-
cellor, who always was a Clergy-man in
the great Court in *Aula Regis*.

William the Conqueror made an alte-
ration in those Courts; for by his Char-
ter to *Remigius* (the last Bishop of *Dor-*
chester and first of *Lincoln*) he did ordain,
that no Bishop or Archdeacon should
hold any more Pleas in the Hundred, nor
should bring any Cause which concerned
the Government of Souls to the Judg-
ment of Secular Men; but that the Bi-
shops should judge of such Causes them-
selves in such places as they should ap-
point; and that no Sheriff, Greve or Of-
ficer of the Kings, nor any Lay Man
should intermeddle with any Laws which
did belong to the Bishop, *Vid. Selden Not.*
Eadmer. pag. 167. 168, where many
authorities for that Charter are cited;
yet afterwards the Bishops did continue
to sit in the County Courts, as appeareth
by the Laws of *H. 1. cap. 7. and 31*. But
was not long before they did erect
their Consistories by virtue of that Char-
ter of *William* the First. And then the
relief of Equity and Conscience in the
courts of the Counties and Hundreds
ceased, and remained after in the King's
highest

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highest Court in *Aula Regis*, out of which Court of *Aula Regis* the four Courts of *Westminster*, Chancery, King's Bench, Common Pleas and Exchequer, were derived and the Kings have ever since in these Courts of Chancery justified and relieved their Subjects from the Rigor and Extremity of Law by the Rules of Equity and Conscience, to which the Kings of this Land are sworn, as well as to do Justice according to the Laws, See *Leges Edwardi Confessoris*, cap. 17. and King Richard the First's Oath in *Hoveden* fo. 374. and *Bracton* lib. 3. cap. 9. sect. 1. 2, where he saith, That the King's Oath is to judge in all things according to Equity and Mercy. And *Rastell* has the same in French in his *Abridgment of Statutes* printed 1528. The Words are, *Que il face fair en toutz ses jugements owel & droit Justice ove discrecion & misericordie*. See also *Walsingham* pag. 193. of King Rich. 2d's Oath, whereby it appeareth that the Kings of this Realm are bound by their Oaths to administer Justice with Discretion and Mercy, which cannot be done when Extremities of Forfeitures and Breaches of Trust may not be examined, and the Parties relieved because of a precedent Judgment.

These four Courts (then included in one Court called *Aula Regis*) did follow the King's Court, whereupon they were
after

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afterwards called Courts; but by the great Charter granted by King *John*, and after by King *Henry* 3d (in the third year of his Reign) which he renewed with some Alterations in the 9th Year, being the 18th year of his Age, The Common Pleas was appointed to be holden in a place certain, and not to follow the King's Court; yet the Chancellors and Judges of the King's Bench did long after follow the King's Court, as appeareth by the Statute *Articuli super Chartas*, 28 E. 1. cap. 7.

Mr. Selden
hath an ancient Copy of the
Charter of
3 H. 3.

But King *Edward* the First being weary of the great Power of the Chief Justice of *England* (and willing to be rid of him) did appoint more to be Judges of Criminal Causes. And then the King's Bench began to be a distinct Court, and the Law to be a Profession and a Study, and Students of the Laws to be Pleaders and Judges. Pleadings (saith Sir *Edw. Coke* 1 *Inst.* 304. b.) came to Perfection in *Edw.* the 3d's time, if that may be called Perfection which hath been the Cause of many Suits, and that many have lost their Lands by omitting or mistaking a Word in Pleading when otherwise they had good Right. For *Legis verbosa lites plurimæ*: And then the Chancery and Exchequer also came to be several Courts. General Custom (saith the *Doctor* and *Student*)

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dent) is the Ground of the Courts of Chancery, King's Bench, Common Pleas and Exchequer, *Lib. 1. cap. 7.*

But the Authority of the Chief Justice being now divided amongst many, who are equal Judges in the King's Bench could not make that Court greater than it was before: And the reason alledged that it should be Superior to the Chancery, because it hath the Stile of *Coram Rege* whereas the Chancery Stile is *Coram Rege in Cancellaria*. And *Additio probat Minoritatem* seemeth Trivial; for neither was the Stile of the King's Bench Court (when it was in the Chief Justice alone) always *Coram Rege* without Addition, but sometimes *Coram Rege de tempore Hugonis Bygod Justiciarii Angliæ*; and sometimes *Coram Hugone Bygod Justiciario Angliæ* not *Coram Rege* 44 H. 3. Notes upon Fortescue, pag. 5.

Neither doth the Rule always hold that *Additio probat Minoritatem*, unless it be *Respectu ejus cujus est Additio*. For this Addition is not in respect of the King's Bench but in respect of the King's Council after called the Star-chamber, because they sat in a Chamber so called.

For Writs issuing out of the Chancery (of the same Form, and under the same Seal) returnable some before the Council, some in Chancery, there was a necessity

essity to make a Difference in the Returns, otherwise no Man could have known where to have appeared; and the Appearances before the Council being *Coram Rege & Concilio*, the other must mention the Chancery, in which respect that Addition was made, and not in respect of the King's Bench; and sometimes the Appearances in Chancery were *coram Rege* without Addition, *Vid. Stat. 1 E. 3. cap. 9.* And by the same Rule the King's Bench would be above the Star-chamber also, because the Stile of that Court is *Coram Rege & Concilio*, which is an Addition.

But for a truer Mark of Superiority the Chancellor is *Secundus a Rege*, The Teste of the Chancery is *Meipso* whereas the Teste of the King's Bench is *Johanne Brampston Milite*.

And it cannot be denied, but that the Lord Chancellor is above all Judges of the Laws, both here, in *France* and elsewhere. The Lord Mayor of *London* is presented to him as to the Chief Justice of *England*. He giveth the Oath to all the Judges. And *20 E. 3. cap. 3.* It is ordained by the King, &c. That all Justices of *Oyer and Terminer*, and all Justices of *Affizes* and *Gaol Delivery* and their Associates shall first make such Oath in certain Points as to them shall be enjoined by

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by the King's Council in Chancery before their Commissions be delivered to them.

I hope 'twill not be said, but that Precedent and Usage (may and hath) prevailed against this Act; for there is no such Oath now taken, either by the Justices of Oyer and Terminer, nor by the Justices of Assizes, nor their Associates.

And farther, the Lord Chancellor admitteth all the Judges into their Places and sitteth above them in their own Courts; calleth the Chief Justices themselves to assist him in Chancery, as the Lord *Coventry* did the Lord *Bramston*, where he had no Voice, but was an Assistant only. And when all the Judges are assembled in the Exchequer Chamber, the Lord Chancellor sitteth above them, and delivereth his Opinion: So did the Lord *Ellesmere* in the Case of the *Postnati*. He granteth Injunctions to stay the Proceedings of the and the other Courts. Besides, if the Lord Chancellor did not grant out Writs to the Courts of Common Pleas and King's Bench, they would sit still and have nothing to do. And before the Statute of *Magna Charta* he used to deny them; nor did he grant any Writs then but upon great Fines (*Doctor and Student cap. 8.*) Some of which Fines had been before that time moderated by King *John* by his Charter 7 Febr. Ann. 1. in libro *Chartarum Archiepiscopi*

scopi Cant. And if the *Register* be the most ancient Book of the Law, (as it is said 4 *Institut.* 140, out of *Natura Bre-*
gium) it will follow that the Chancery is the most ancient Court; for all those Writs were framed and sealed in the Chancery, and without such Writs those other Courts could not proceed. And the *Mir-*
or saith, That Cases were judged according to Equity, before the Customs of the Realm were written and made certain,
Cap. 1. Sect. 3.

By all which it followeth; That the Chancery is the Superior Court.

Nor let it be said, that there is no need of a Chancery, because that the Judges (can and) in all Ages have judged in Equity: For although no Man did ever doubt of their Abilities; yet that they never did judge in Equity (otherwise than as by Commission when they sit in Chancery) or that there is any Remedy at Law by a Writ of Error after Judgment for Equity, is more than can be shewed; certainly such a Writ was never sealed in the Chancery; but that saying sheweth, that there is need of a Chancery, and of Equity after Judgments at Law, and then the Question will be (not of the thing, but) who shall be the Judges of it. And that certainly is fittest to go as it was wont (as *Jupiter* said of the Weather) and
not

not now to be transferred to a new Judicature.

And if the Judges should be made Chancellors, how would they execute that Power? Can they examine any Man upon Oath, whether he have received all (or part of) his Money upon a Bond or Mortgage? Or whether he have broke a Trust? And will they examine Witnesses *viva voce*; or grant Commissions into the Country? And how shall those be published? And if they should do all this, were not this to erect a Court of Chancery in themselves, and to confound the Courts of Equity and Law together? It might better be said that there is no need of Tryals by Juries: For Tryals for Criminal Causes were by *Ordeal* till *H.* And then because a General Council had taken away that kind of Tryal, the King wrote to the Justices *Itinerants* to punish some, leaving it to their Discretions how to proceed against such other Offenders. And certainly the Lord Chancellor and that Court are as able to judge a Cause upon hearing of Witnesses, as Twelve Country Jurors. No other Countries have any such Tryals; but there is no Country but hath Chancellors and Courts of Equity to mitigate the Rigor of the Laws, which Rigor cannot appear till Judgment be passed; for before the Ca

Lateranense
Anno 1215.
cap. 18.

be adjudged, who can know whether the Law be rigorous or no? If therefore after Judgment there shall be no Remedy, then the Rigor of the Law cannot be mitigated, which were not, *Suum cuique tribuere*; but rather *Discedere ab aequitate, sequendo subtilitates*

And as to the Objection, that by this Statute providing against a Superior Court, viz. the Parliament, all Inferiors are comprehended, to which end the Archbishop of Canterbury's Case upon the Statute of 13 Eliz. was alledged. And as to the other that 'tis an Absurdity to say, That the King is within this Statute and the Parliament, and not the Chancery; It may be answer'd, That 'tis no general Rule, That because an Act is made against a Superior it should therefore bind all Inferiors; for the Statute of 1 Eliz. That no Archbishop or Bishop should alien to any Subject, did not extend to Prebends, Parsons, &c. though they were Inferior and Subordinate to the other. But the Case of the Archbishop of Canterbury was (*è converso*) that the Superior was not bound by an Act made against an Inferior, as may appear by the Acts of 31 H. 8. 13 El. and of Westm. 2. therein mentioned.

Neither is there any Absurdity at all; for if the King assenting to that Act had meant to abridge the Chancery, 'tis probable

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bable the Chancery would have been named in it; but the King intending that that Act should only extend to Pleas of the Crown, by the Words (*Plee roial*) there was no necessity of naming the Chancery that medled with no such Pleas; and in other Pleas, neither the King nor Parliament are bound by this Statute, as may appear by the continual Practice ever since.

And where it is said, That the more ordinary the Chancery is, the more Mischief there is; so it is said the more Physicians the more Diseases; yet the Diseases are not in the Physicians, nor the Mischiefs in the Chancery: They are in the multiplying of Wickedness, and that Men seek to take advantages by extremities of Law, which the Chancery doth Remove or Mitigate by the Rules of Equity.

Of the Necessity of the Court of Chancery, see more hereafter, where the Inconveniencies (if it should not relieve after Judgments) are mentioned.

2.

Secondly, concerning the Certificate, and the Persons and Qualities of the Referees; they are all known to be of great Worth and Learning, great Practicers in the Law Courts as well as in Chancery, and very shortly after were advanced to

the chiefest places in both; they were all then of his Majesty's Learned Council, and one of his Privy Council sworn to give the King true and faithful Counsel, when they should be required; and in this Case they were required, and had time to deliberate, and they did return their Opinions to his Majesty under all their Hands, which do remain. And can any Man think that they (being Men of such Note) would in such a Case, as concerned the Jurisdiction and Proceedings in this High Court of Chancery (whereof his Majesty himself was to give Judgment) respect their Practice in Chancery, and their own ends before their Reputations, Allegiance and Oaths to his Majesty? For they were as much sworn to give their Opinions (in this Case) truly and faithfully, as the Judges are when they deliver their Opinions in Parliament; or when they go their Circuits, or sit in Chancery.

Neither was the Consequence so dangerous in that the Judges were not called to it, for it was a Question of Jurisdiction of Courts; and if Judges should judge of Jurisdictions they might bring all under themselves; therefore neither the Judges, nor the Lord Chancellor, nor any of the Chancery were advised with (for they might be taken to be Parties) but the King did advise with his Learned Council, who were

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indifferent, and sworn to give him faithful Counsel (as is said.) And he was a judicious King, and knew best with whom it was fittest for him to advise.

*Hint certificate.
Let this certificate
& every thing rela-
-tive to it more
fully in the
copy of a record
printed at
the end of la-
ry's Rep. 163.
to 183.*

As concerning the Certificate, it will not be amiss to set down the Substance of the whole Proceedings therein, and the Reasons and Principles of Law, which the said Referees expressed and delivered to his said Majesty as they are recorded.

His said Majesty being informed of this Difference between his two Courts of Chancery and King's Bench, and being informed that there were many Precedents in the Chancery in the Times of King Henry VII. and continually since, whereof a Note was delivered to his said Majesty, That such as complained there to be relieved in Equity after Judgments at Common Law, (in cases where the Judges could not relieve them) directed, That his Attorney-General calling to him the rest of his Learned Council should peruse the said Precedents, and certify his Majesty the truth thereof with their Opinions.

Whereupon they returned to his Majesty this Answer as followeth:

According to your Majesty's Commandment we have advisedly considered of the Note delivered unto us of the Precedents of Complainings and Proceedings

*Words of the
first certificate.*

in Chancery after Judgments at Common Law; and have also seen and perused the Originals, out of which the same Note was abstracted; upon all which we do find and observe the Points following.

We find the same Note is fully verified and maintained by the Originals.

1.

We find, that there hath been a strong Current of Practice of Proceeding in Chancery after Judgment, and many times after Execution, continued from the beginning of King *Henry VII's* Reign unto the time of the Lord Chancellor that now is, both in the Reigns *separatim* of the several Kings, and in the times of the several Chancellors, whereof divers were great Learned Men in the Law, it being in cases where there is no Remedy for the Subject by the strict course of the Common Law, unto which the Judges are sworn.

2.

We find, That the Proceeding in Chancery, hath been after Judgment in Actions of several Natures as well real as personal.

3.

We find, it hath been after Judgment in your Majesty's several Courts, the King's Bench, Common Pleas, Justice in Eyre.

4.

We find, it hath been after Judgment obtained upon Verdict, Demurrers, and where Writs of Error have been brought.

5.

6. We find in many of the Causes, that the said Judgments are expressly mentioned in the Bills in the Chancery themselves to have been given; and Relief prayed thereupon sometimes for stay of Execution, sometimes after Execution, of which kind we find a great Number in King *Henry* the VIIth's Time.
7. We find the Matter in Equity laid in such Bills, in most of the Cases, to have been Matter precedent before the said Judgment, and not Matter of Agreement after.
8. We find in the Cases, not only the Bill preferred, but Motions, Orders and Injunctions, and Decrees thereupon for discharging and releasing of the Judgments, or avoiding the Possession thereupon obtained; and sometimes for the mean Profits, and the Release of the Costs, &c.
9. We find in some of the Cases, that this very Point (that Judgment hath been given) hath been stood upon by the Defendants, and alledged by them by way of Demurrer, and over-ruled.
10. We find, that the Judges themselves in their own Courts when there appeared unto them Matters of Equity, because they by their Oath and Office could not stay the Judgment, (except it were some small time) have directed the Parties to seek Relief in Chancery.

We

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We find that it hath not only been done in the times of the several Chancellors, but by the Judges themselves, and that without Difficulty, while they sate in Chancery in the Vacancy or Absence of the Chancellor.

We find the Hands of sundry principal Counsellors at Law, whereof divers of them are not Judges, and some of them now in chief place to Bills in this kind.

Lastly, there were offered to be shewed unto us many other Precedents, whereof we heard some read, and found them to be of like Nature with those contained in the Note.

And afterwards a Case was presented to his Majesty as followeth.

The Case.

A. Hath a Judgment and Execution in the King's Bench or Common Pleas against *B.* in an Action of Debt of 1000 *l.* and in an *Ejectione Firme* of the Manor of *D.* *B.* complains in the Chancery to be relieved against these Judgments according to Equity and Conscience, allowing the Judgment to be lawful and good by the Rigor and strict Rules of the Common Law, and the Matter in Equity to be such as the Judges of the Common Law being no Judges of Equity,

II.

12.

13.

Note that this first certificate was signed by Francis Bacon Att. General Henry Folwellson Jell. Genl. & Henry Mountague & Ralph Crew King's Serjeants See Mr. Fil. in small folio on Tonnage & Poundage & Chancery &c. 758.

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quity, but bound by their Oaths to do the Law, cannot give any Remedy or Relief for the same, either by Error or Attaint, or by any other means.

Question.

Whether the Chancery may relieve *B.* in this or such like Cases, or else leave him utterly remediless and undone? And if the Chancery be restrained herein by any Statute of *Præmunire*, then by what Statute, and by what Words in any Statute is the Chancery so restrained, and Conscience and Equity excluded, banished and damned?

Which Case his Majesty referred again to his said Attorney and Learned Council, calling to them the Prince's Attorney, who returned this Answer.

Second Certificate. According to your Majesty's Commandment we have deliberately advised of the Case sent unto us by the Lord Chancellor, and of the Statutes as well those of *Præmunire*, as others as far as (we take it) may concern the Case. And for our better Information herein, we have thought fit to send for, and peruse the Original Records themselves remaining in the Tower of *London*, of those Statutes not only appear

See same in Henry's Rep. 17. b. 101. in clause.

appearing upon the Rolls, but also upon the Original Roll of Petitions in Parliament, with the Kings Answers, which is the Warrant to the Rolls of Parliament. We have taken into consideration as well Book Law, as divers other Acts of Parliament which may give light unto the Statute, whereupon the Question properly grows, together with such ancient Records and Precedents as we could find, as well those which maintain the Authority of the Chancery, as those which seem to impeach the same. And upon the whole Matter we are all of Opinion, That the Chancery may give Relief in the Case in Question; and that no Statute of *Praemunire* or other Statute restraineth the same.

And because we know not, what use your Majesty will be pleased to make of this our Opinion, either for the time Present or Future, we are willing to shew some Reasons of the same, not thinking fit to trouble your Majesty with all those Things, whereupon we have grounded our selves, but selecting out some principal Things which moved us to be of this our Opinion, to the end the same may be a fuller Object of your Majesties Princely Judgment, whereunto we always submit our selves.

And

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And first of all, we must lay for a sure Foundation that which was contained in our former Certificate, concerning the continual Practice by the space of Six score Years, in the times of King *Henry VII*, King *Henry VIII*, King *Edward VI*, Queen *Mary* and Queen *Elizabeth*, of this Authority; and that not only in those Times, when the Authority was managed by the Bishops, which might be thought less Skilful or less Affectionate towards the Laws of the Land, but also by diverse great Lawyers, which could not but both know and honour the Laws as the means of their Advancement; Sir *Thomas Moore*, the Lord *Audely*, the Lord *Rich*, Sir *Nicholas Bacon*, Sir *Thomas Bromley*, Sir *John Pickering*.

And further, that most of the late Judges of the Kingdom, either as Judges when they sate in Chancery by Commission, or as Counsellors at Law, when they did set their Hands to Bills, have by their Judgment and Counsel upheld the same Authority. And therefore forasmuch as 'tis a true Ground, that *Optimus Legum Interpres est Consuetudo*, especially when the Practice or Custom passeth not among vulgar Persons, but among the most high and scient Magistrates of the Kingdom. And when also the practising of the same should lie under so heavy pain as *Præ*

manire

Præmunire, this is unto us a Principle and most
 simplicitate Satisfaction, That those Statutes
 ought not to be construed, to extend to
 this Case. And this of it self we know
 is of far more Force to move your Majesty
 than any Opinion of ours, because Kings
 are fittest to inform Kings, Chancellors
 to teach Chancellors, and Judges to teach
 Judges.

But of our Science and Profession, we
 have thought fit to add these farther Rea-
 sons, and Proofs very briefly, because in
 so ancient a Profession of Jurisdiction we
 hold it not fit to amplify.

The Statutes upon which this Question
 grows are principally two; whereof one
 is the Statute of *Præmunire*, and the other
 is a Statute of simple Prohibition. That
 of *Præmunire* is that of 27 E. 3. cap. 1.
 The Statute of simple Prohibition is the
 Statute of 4 H. 4. cap. 23. There be di-
 vers other Statutes of both Kinds, but the
 Question will rest principally upon these
 two as we conceive.

For the Statute of 27 E. 3. It cannot
 in our Opinions extend unto the Chance-
 ry, for these Reasons.

First, Out of the Mischief, which the
 Statute provides for and recites, viz. That
 such Suits and Pleas against which the
 Statute is provided, were in Prejudice
 and

I.

and Disinheritance of the King and his Crown, which cannot be applied to the Chancery; for the King cannot be disinherited of Jurisdiction, but either by the Foreigner or by the Subject, but never by his own Court.

2. Out of the Remedy which the Statute appoints, *viz.* That the Offender shall be warned within two Months to be before the King and his Council, or in Chancery, or before the King's Justices of the one Bench or the other, &c. by which Words 'tis opposite in its self, that the Chancery shall give both the Offence and the Remedy.

3. Out of the Penalty, which is not only severe, but hostile, namely, the Offender shall be put out of the King's Protection; which Penalty altogether favours of adhering to foreign Jurisdiction, and would never have been inflicted upon an Excess only of Jurisdiction in any of the King's Courts, as the Court of Chancery.

4. Out of the Statutes precedent and subsequent, as 25 E. 3. cap. 1. and 16 R. 2. cap. 5. which are of the same Nature, and cannot be applied but to foreign Courts; for the Word [*Alibi*] or [*Elsewhere*] is never used but where *Rome* is named, especially before the Disjunctive in this Statute, which only gives the Colour,

viz.

viz. That they which draw any out of the Realm, in Plea whereof the Cognizance pertaineth to the King's Court, or of things whereof Judgments be given in the King's Court, or which do sue in any other Court, to impeach the Judgments given in the King's Court. This last Disjunctive, we say, which must go farther than Courts out of the Realm, which are fully provided for (by the former Branch) hath sufficient Matter to work upon in respect of such Courts, which though they were locally within the Realm, yet in Jurisdiction were subordinate to the Foreign, such as were the Legate's Court, the Delegates Court, and in general all the Ecclesiastical Courts at that time, as is expressly construed by the Judges, in *E. 4. fo. 6.*

In this, the Sight of the Record of the Petition doth clear the Doubt, where the Subjects do supplicate to the King to ordain a Remedy against those, which pursue in other Courts, than in his own, against Judgments given in his Court, which explains the Word [*other*] to be other than the King's Court.

With this agrees notably, the Book of Entries, which translates the Words *in other Court*, not [*in alia Cur'*] sed in [*aliena Curia.*]

This

7.

This Statute of 27 E. 3. being in Corroboration of the Common Law, as it self recites, we do not find in the Register any Precedent of the Writ, *Ad Cur Regis*, which are framed upon these Cases, that were afterwards made penal by *Premunire*, but only against the Ecclesiastical Courts.

8.

Lastly, We have not found any Precedent at all of any Conviction upon the Statutes of *Premunire* of this Nature for Suits in Chancery, but only two or three Bills of Indictment preferred, *Sed nihil inde venit* for ought appears to us.

Here 2 certificates are
ends. What follows
this vindicates in
certificates as in
the second copy
in Cary's Rep. contains
much more; it was
a remarkable the
2. certificate
as given in Cary
concludes, also
if the references
certifying
expressed further
information of the
things mentioned
being mentioned
as not having
furnished them
precedents.

To which Reasons, there is no Answer at all given (in those Institutes) nor Notice taken of them, but of the Privy Seal for the Inrollment of King James's Judgment grounded upon them which appears to be 28 Years before the publishing of those Books (so long that Judgment rested in Peace) only against the last Reason there is mention made of some Indictments preferred upon this Statute viz. against Heydon, Lloyd, Demse, Heale but they do rather confirm than refute that Reason; for 'tis not said *Quid inde venit*. There is no Precedent alledged of any Conviction upon those Indictments and a Man that is indicted is not therefore guilty. And as to the other against Sir

Anthony

Anthony Mildmay, who in the said Institutes (is said to have purchased) and pleaded his Pardon: That doth not prove him guilty neither; for any Man that hath a Coronation or Parliament Pardon will rather plead it than be troubled with a wrangling Adversary; or will purchase a Pardon rather than run so great a Danger, as the Penalty of a *Premunire*, upon the Verdict of Twelve Men, when he is doubtful that the Judge's Opinion may be against him, and that he would declare the Law to be so.

And farther, 'tis observable, That this Statute is not fully recited in those Institutes for it ends at those Words [*Eient* *our*] so the Clause of the Remedy, which is to be given by the Chancery, which followeth, and is mentioned in the second Reason, is not recited; although the Remedy, which is to be given by the Judges, is recited afterwards in the same Chapter, pag. 125.

Neither are the Words [*en autri Court*] well translated, for they do not signifie (as 'tis there) [*in any other Court*] where the Word [*any*] is added more than is in the Original; but [*In the Court of another*] [*In alterius Curia*] for [*autri*] cannot agree with *Court*, they differ both in Case and Gender. The same Word is used in the Laws of William the First, cap.

cap. 14. *Ki. alteri espouse purgist; Qui sponsam alterius vitiaverit not [aliam]* And cap. 33. *Li naifs qui departes de sa terre dunt il est nez event a autri terre, nuls nel retenget, &c. Nativus qui discedit a terra ubi natus est, & venit ad terram alterius, nullus eum retineat.* And again in the same Chaptet in the same Sense. And 14 E. 3. cap. 2. *Presentments que nous ferrent devolutz en autri droit.* And 25 E. 3. cap. 1. *bis*, and cap. 2. *Que le Roy ne prendroit title a presenter a nully Benefice en autri droit, &c.* That the King will not take Title to present in the Right of another Man, &c. And in many other Places; but it is always understood [of another] not [any other] as is there translated: And then the Sense must be *That whosoever shall sue in another Man's Court than the King's, shall, &c.* which no doubt was the intent of this Statute as is touched in the Fifth and Sixth Reasons, to which there is no Answer given.

Præmunire hath now no place, seeing there is no pleading. A- libi quam in Cur' Regis. Smith's Com. mon-wealth, lib. 3. c. 11.

And so the Chancery (being the King's Court and not the Court of another) cannot be within this Statute, no more than the King's Bench. For Judgments given in the Common Pleas are examined and reversed by Writ of Error in the King's Bench; but Writs of Error (nor Attaints) being excepted out of this Statute, the

King's Bench should fall within it, as well as the Chancery, or any other of the King's Courts.

And if it be said that the former Judgment was no legal Judgment, because it is reversed upon Matter appearing upon the Record, and so ought not to have been judged at all; yet it was a Judgment given in the King's Court, and (by the Construction of this Statute) it ought not to be questioned or overthrown in any other Court. The Consideration thereof made those to look about them, when they saw themselves not unlike to fall into the Pit which they went about to dig for others, whereof they shewed more fear than the Chancellor did as appears by the coming off.

So the Chancery and all other Courts within the Realm (except such as were subordinate to the Court of *Rome*, which were the Courts of another, not of the King) being cleared from this Statute.

The other Statute of 4 H. 4. cap. 22. doth follow to be considered; and therefore it will not be impertinent,

First, To recite a former Petition of the Commons in the same Parliament, to which part of the King's Answer (to this petition) doth relate, and likewise the Statute it self.

Y

Se-

Handwritten notes:
~~have agreed~~
~~with the~~
~~what follows~~
~~that is~~
~~the certificate~~
~~proceeds in~~
~~accordance with~~
~~the~~
~~style, but in the~~
~~above~~
~~fuller~~
 I.

2.

Secondly, The Reasons given to King *James* by the said Referees of their Opinions upon this Statute, and his said Majesty's Judgment upon both Statutes.

3.

Thirdly, Some farther Observations upon this Statute, upon which the said Referees might ground their Opinions, though they did, as they say, forbear to express them.

The Petition and the Statutes (as they are upon the Parliament Rolls, and) as the Statute is in print, both in the *French* and *English*, are as followeth.

Roꝝ Parliamenti de Anno Regis *Henrici* quarti quarto.

Suggestion
78.

I Tem Priunt les Cōes q̄ come en les Estatutes faitz a Westm̄ l'añ de Regne le Roy ap̄el n̄re S̄nr le Roy quore est l'añ de son Regne xxv. entre autres estoit ordeigne q̄ null y delers soit pris p̄ petiçon ou suggestion fait a n̄r Seignieur le Roy ou son Conseil, si ce ne soit p̄ enditement des loialx gents de la visne ou tiel faã si fist en deue manere ou process fait p̄ brieve original ne ou de son franketeint sil ne soit mesme duelement en responce & forigne duel p̄ force de ley. Et outre ceo en l'Estatutz fait a Westm̄ l'añ de Regne mesme le Roy

Edward

Edward xliij est essentu & accorde p bone
governance de la Cõe q nul hõe soit mis
a respondre sans presentm̃t devant Justi-
ces ou chose de Record ou p deve processe
& brieve original solont ancien Ley de la
terre & si rien desore enedant soit fait
l'encontre soit void en Ley & tenuz pur
null' mes pur Erroz Et non obstant
quel estatut puis encea plusors de voz
liegez ount este grevez p diverses brieses
& lres ascuns p simples suggestions sans
autres chose trove issauntz hors de la
Chancellary sur certain peine comprise
en y ceux de comperer devant voz en ṽre
Chancellerie ou Conseil ascuns p brieses
issauntz hors de ṽre Ercheqr Quia datum
est nobis intelligi. Et ascuns per lres
south ṽre prive seale de comperer devant
ṽre Conseil a tres grant arrerisment de
voz liegez & encontre voz leyes & Esta-
tutz avantditz : Que pleise D'ordeigner
q les estatutz, avantditz de ceo enevant
soient pleigenm̃t gurdes & outre dor-
deigner q brieses & lres avantditz soient
de tout ouster & q nul liege del Roy soit
ante de comperer ou respondre p nul tiel
bries ou lres ne mis a pde de lour biens
ou Chateur & celui q face il tiel sugge-
stion en temps abenir sur null y de voz
liegez soit ceo a voz mesmes ṽre Conseil
Chancellor ou Treasorer ou devant voz
Barons de la Ercheqr q celui q face
Y 2 tiel

tiel suggestion trove bone & sufficient
 seurty deaver la suggestion a fin q̄ si ce-
 luy q̄ ensi est accusez de son bone gree
 vient en le lieu ou l'avantdit suggestion
 est & traverse l'avantdit suggestion soit
 son traverse resceu sans delay & sil soit
 trove encontre celuy q̄ ensi fist tiel sug-
 gestion & pur celuy q̄ ensi est accusez q̄
 celuy q̄ ensi est accusez relover sez dama-
 gez vers l'accusour a taxer per mesme
 l'enqueste p̄ quel il est ensi acquite eiant
 regard a la disclaundre costages & labors
 pur la defence & outre face fyn & ransom
 a Roy & son corps pris a demoier p̄ un
 an en prisone pur la faurisme abandit
 Et que ceste ordonnance extende sibien a
 temps passe come a temps avenir de
 tieux suggestions pendantz nient uncore
 discusse.

Ror'.

Le Roy voet chargier ses officers de
 leur plus abstenir denvoyer pur ascuns
 ses Lieges q̄ils nont fait devant ses
 heures mais n'est pas l'entencon mesme
 nre Seignieur le Roy que mesmes ses
 officers tant se abstinerent q̄ils ne pur-
 ront envoir pur sez lizez en matries &
 causes necessaries come il ad este fait en
 temps des bons progenitours mesme nre
 Seignieur le Roy.

The same in English.

I Tem, The Commons do pray, That
 whereas in the Statutes made at *West-*
minster in the year of the Reign of King
Edward, Grandfather to our Lord the
 King that now is, in the 25th year of his
 Reign, amongst other things it was or-
 dained, That no Man should thereafter
 be imprisoned upon Petition or Sugge-
 stion made to our Lord the King or his
 Counsel, but by Indictment by lawful Men
 of the Visnage where the Fact was done
 in due manner, or by Process made by
 Original Writ: Nor be put out of his
 Freehold unless he were duly brought to
 answer and judged out of the same by
 the Law. And farther in the Statutes
 made at *Westminster* in the 42d year of
 the Reign of the said King *Edward* it was
 assented and accorded for the good Go-
 vernment of the Commons, That no Man
 should be put to answer without Present-
 ment before Justices, or matter of Record, or
 by due Process and Writ Original accord-
 ing to the ancient Law of the Land;
 and if any thing hereafter should be done
 to the contrary it should be void in Law,
 and holden for Null and Error. And not-
 withstanding the said Statute many of your
 Subjects have since that time been grieved;
 Y 3 some

Suggestion
78.

some upon bare Suggestions without Proof by divers Writs and Letters issuing out of the Chancery upon a certain Pain therein mentioned to appear before you in your Chancery or Council; some by Writs out of the Exchequer, *Quia datum est nobis intelligi*; and some by Letters under your Privy Seal to appear before your Council, to the great hindrance of your Subjects, and against your Laws and Statutes aforesaid. That it may please you to ordain, that the said Statutes may from henceforth be fully kept; and farther, that the Writs and Letters aforesaid may be altogether taken away, and that none of the King's Subjects may be compelled to appear or answer by any such Writ or Letters, nor made to lose their Goods or Chattels; and that he that shall make such Suggestion against any of your Subjects hereafter, whether it be to your self, your Counsel, Chancellor or Treasurer, or before your Barons of the Exchequer, that he that makes such Suggestion may find good and sufficient Surety to prove his Suggestion, to the end that he that is so accused may freely come to the place where the Suggestion is made, and traverse the said Suggestion; and that his Traverse may be received without Delay, and if it be found against him that so made the Suggestion, and for him

him that is so accused, then he that is so accused may recover his Damages against the Accuser to be taxed by the said Inquest by which he is acquitted, having regard to the Slander, Costs and Labour in his Defence; and farther may make Fine and Ransom to the King, and be imprisoned for a year for the Falshood aforesaid; and that this Ordinance may extend as well to the time passed as to come for such Suggestions as hang undecided.

The King will charge his Officers to be more sparing to send for his Subjects than they have been heretofore. But it is not the Intention of our said Lord the King, that his said Officers shall so far Refrain, that they may not send for his Subjects in Matters and Causes necessary, as hath been done in the times of the good Progenitors of our said Lord the King.

Rot' Parliamenti de Anno quarto Regis
Henrici quarti.

I Tem Priont le Cōes q̄ come sibien en Plee Roial come personal apres judgments renduz en les Courts nre Seignieur le Roy les parties sont faits venir sur grief peine a la forth devant le Roy mesme a la forth en Conseil & a la forth

Plee Royal &
Personal.

The Jurisdiction of the Court

en Parliamt deent respondre de nove-
lagrand anientiffemēt de parties avant-
ditz & q̄ plus est en subversion de la
Cōe Ley del terre Pleesea n̄e treser-
celent & tregracious Seignieur le Roy
de ent ordeingner remedy issint q̄ apres
judgment rendu en toutz Courts n̄e
Seignieur le Roy les parties & lour heirs
ent soient en pees tam le judgm̄t soit
anientz per atteint ou per erroz si erroz
y ad come il ad este per la ley usee en
temps de vouz tresnoble progenitours
Roys d'Engleterre & en mesme la mainere
come affiert soit chun matire q̄ pourra
estre terminee per la Cōe Ley & q̄ due
peine soit ordeynee en cest present Par-
liament envers ceux q̄ pursuent le con-
trery Et ceo pur dieu & en le salvation
de toutz estates de Roialme.

Rot.

Touchant le primer Article de cest pe-
tition quant al judgments renduz en
Court le Roy LE ROY LE VOET Et
quant al ramnant de mesme le petition
il est responduz peramont entre les Cōes
petitions.

The same in English.

Item, The Commons do pray, that
whereas as well in Plea Roial as Per-
sonal after Judgments given in the Courts
of

of our Lord the King, the Parties are made to come upon great Pain, sometimes before the King himself, sometimes in Council, sometimes in Parliament to answer thereof anew, to the great undoing of the Parties aforesaid, and which is more, in subversion of the Common Law of the Land: That it may please your most Excellent, and most Gracious Lord the King, thereof to ordain Remedy, so as after Judgments given in all Courts of our Lord the King, the Parties and their Heirs may be thereof in peace until the Judgment be undone by Attaint or by Error, (if there be Error,) as hath been by the Law in use in the times of your noble Progenitors Kings of *England*. And in the same manner as it is meet, that every matter may be (that can be) determined by the Law; and that due pain may be ordained in this present Parliament against those that do pursue the Contrary; and that for God his sake and in Salvation of all the Estates of the Realm.

Touching the first Article of this Petition, as to Judgments given in the King's Court, *LE LOY LE VOET*: And as to the remnant of the said Petition, 'tis answered above amongst the Commons Petitions.

Rot'.

Statutum

*Statutum de Anno quarto Henrici quarti,
Cap. 22.*

As it is in the printed Statutes in
French.

I Tem, Come sibien en ple roial come
personel apres judgments renduz en
les Courts nre Seignieur le Roy les
parties sont faitz venir sur grevouise
peine a le foits devant le Roy ins & a
la foitz devant le Conseil du Roy, & a
le foitz en Parliament dent rendre de
nobel a grand anientissement des prties
suis ditz & en la subversion del cõe Ley
del terre ordeines est & establies q apres
judgements rend en les Courts le Roy les
pties & lour heires ent soint en pees tanq
al judgement soit anientes p Atteint ou
p Errour si Errour y ad come il ad este
uses p la ley en temps des Progenitours
nre dit Seignieur le Roy.

The Statute in English is printed thus.

Cap. 22.

I Tem, Where as well in Plea Real as in
Plea Personal after Judgment given
in the Court, of our Sovereign Lord the
King, the Parties be made to come up-
on grievous Pain, sometimes before the
King himself, sometimes before the King's
Council,

Council, and sometimes in the Parliament to answer thereof of new, to the great impoverishing of the Parties aforesaid, and in the subversion of the Common Law of the Land. It is Ordained and Established, that after Judgments given in the Courts of our Sovereign Lord the King, that Parties and their Heirs shall be thereof in peace till the Judgment be undone by Attaint or by Error (if there be Error) as hath been used by the Laws in the time of the Progenitors of our aforesaid Lord the King.

This Statute (as hath been observed) is but thrice mentioned in all the Law Books, once in *Doctor* and *Student*, and twice in those *Institutes*. And if the supposed Author did intend in those *Institutes* to make a Question, he did then not keep his Word given to the Lords of the Council (which was;) That he would not draw it into Question, nor maintain any Difference between the Courts, as it is entered in the Council-Book before mentioned. And if the Publisher of those Books hath done it contrary to his Intention, he hath not done well to publish such Opinions to make a Difference without the Author's Intention: But howsoever it doth appear that those Books of *Institutes* were printed but in the

the year 1644, which was 241 years after the making of this Statute; and it is strange that in all that time there should be no Occasion given, nor Opinion delivered that the Chancery should be within that Statute: But now to be found out so long after. For *Seintgerman* (in his Book intituled *Doctor and Student*) thus he saith, That by this Statute Judgments given in the King's Courts shall not be examined in Chancery, Parliament or elsewhere, and that 'tis a good Law (wherein notwithstanding he doth mistake) for the Chancery is not named in that Statute, nor the Word [*Elsewhere*]; yet he saith farther, that many Mischiefs may happen thereby: For that Statute was made (saith he) to eschew the Inconveniences that otherwise Plaintiffs (though upon never so good grounds) should seldom come to the Effect of their Suits; but that it prohibiteth not Equity, but only the Execution of the Judgment, *Lib. 1. Cap. 18*. Besides, that Book giveth a general Rule, That where any thing is excepted from the general Customs and Maxims of the Law by the Law of Reason, Remedy is given in Chancery by *Subpœna*, and an Injunction is obtained to stop Proceedings at Law, *Lib. 1. Cap. 17*. And in Case of a Bond (he saith plainly) if the Money be paid and there be no Acquittance,

ance, the Law is not that it should be said again; for that Law were against Reason and Conscience, the Party hath his Remedy by *Subpæna*; and so in many other Cases, where Conscience serveth for him, *Cap. 12.* which is as much as the Chancery doth or ever did desire.

And so there is no Authority in all the books of the Law against this Practice in Chancery, and the only Book that mentioneth this Statute is for the Chancery.

Secondly, The Referees do certifie his said Majesty, That this Statute was made against Proceedings within the Realm, and not against foreign, and therefore hath no Penalty annexed; nevertheless they say; we conceive it extends not to the Chancery in the Case delivered for these Reasons.

First, The Statute recites where the Parties are made to come upon grievous Pains, sometimes before the King himself, sometimes before his Council, and sometimes in Parliament to answer thereof anew, &c. where it appeareth, That the Chancery is not named, which could not have been forgotten, but was left out upon great Reason, because the Chancery is a Court of ordinary Justice, for Matter of Equity, and the Statute meant

2.

All in page 36 of the bracket here is no part of the certificate as in Cary,

but is here intermixed.

What follows is intermixed here is from the certificate

in Cary; but with the omission

of the following very material words.

For the statute only of H. A. That

"we doubt was made against the proceedings within the realm, & not ag^t forraign, & therefore has no penalty annexed. And we conceive, that it extends not to the Chancery in the case delivered, for these reasons."

only to restrain extraordinary Commissions and such like.

2. Secondly, This appeareth fully by view and comparing the two Petitions which were made the same Parliament of 4 *H* 4. placed immediately one after the other; the first which was rejected by the King, and the second whereupon this Statute was made; the first being to restrain three ordinary Proceedings of Justice, *viz.* in the Chancery by Name, in the Exchequer, and before the King's Council by Process of Privy Seal, unto which the King makes a Royal and prudent Answer in these Words; The King will charge his Officers to be more sparing to send for his Subjects by such Process than they have been heretofore; notwithstanding it is not his Mind, that his Officers shall so far be restrained, but that they may call his Subjects before them in Causes necessary, as it hath been done in the times of his good Progenitors. And then immediately follows the Petition, whereupon the Act now in Question was unto which the King gave his Assent, and wherein no mention is made at all of the Chancery or Exchequer.

3. Thirdly, If the Chancery should be understood to be within this Statute, yet this Statute extends not to this Case; for the Words are, That the King's Subjects
after

after Judgments are drawn to answer there-
of a new; which must be understood,
when the same Matter formerly judged is
put in Issue or Question again: But where
the cause is called into Chancery only upon
point of Equity, there, as the point in Equi-
ty was never in Question in the Com-
mon Law Courts, so the point of Law or
Fact, that concerns the Law is never in
Question in the Chancery; and so the
same thing is not twice in Question, or
answered a new, for the Chancery doth
supply the Law and not cross it.

Fourthly, It appeareth to our Under-
standings by the Case of Error and At-
taint in the said Statute, what Jurisdic-
tion it was that the Statute meant to re-
strain, viz. Such Jurisdiction as did as-
sume to reverse and undo the Judgment,
as Error and Attaint doth, which the
Chancery never doth, but leaves the Judg-
ment in Peace, and only medleth with the
corrupt Conscience of the Party; for if
the Chancery doth assume and reverse the
Judgment in the point adjudged, it is void,
as appears by 39 E. 3. 14.

Fifthly, We find no Precedents of any
Proceedings to Conviction or Judgment
upon any Indictment framed or grounded
upon this Statute, no more than upon the
Statute of *Premunire*. And the late In-
dictments

4.

5.

The Jurisdiction of the Court

dictments are [*contra diversa Statuta*] not mentioning the particular Statutes.

6.

Lastly, It were a great Mischief to force the Subject in all Cases to seek Remedy in Equity, before he knew whether the Law will help him or no, which oftentimes he cannot do till after Judgment, and therefore he is to seek his Salve properly, when he hath his hurt.

There be divers other things of Weight, which we have seen and considered of, whereupon we have grounded our Opinion, but we go no farther than that we have seen.

But because Matter of Precedent is greatly considerable in this Case, and that we have been attended by the Clerks of the Chancery with the Precedents of that Court; and have not been attended by any Officers of the King's Bench with any Precedents of Indictments. If it shall please your Majesty to direct, that the said Officers shall attend us with their Precedents, we shall give your Majesty faithful Report of them as we have done of this other. All which, &c.

*Fran. Bacon, Hen. Telverton,
Hen. Montagu, Randl. Crew,
John Walter.*

Upon

Upon which Certificate the King gave his Judgment as followeth.

Forasmuch as Mercy and Justice be the true supporters of our Royal Throne, and that it properly belongeth unto us in our Princely Office to take care and provide, that our Subjects have equal and indifferent Justice ministred unto them. And that where their Case deserveth to be relieved in course of Equity by Suit in our Court of Chancery, they should not be abandoned and exposed to perill under the Rigor and Extremity of our Laws, We in our Princely Judgment having well weighed and with mature Deliberation considered of the several Reports of our Learned Council, and all the parts of them, do approve, ratifie and confirm, as well the Practice of our Court of Chancery exprest in their first Certificate, as the Opinions for the Law upon the Statute mentioned in their later Certificate, the same having Relation unto the Case sent unto them by our Chancellor. And do will and command that our Chancellor, or Keeper of the Great Seal for the time being, shall not hereafter desist to give unto our Subjects upon their several Complaints now or hereafter to be made, such Relief in Equity (notwithstanding any Proceedings at the Com-

Z

mon

The Jurisdiction of the Court

mon Law against them) as shall stand with the Merit and Justice of their Cause. And with the former, antient and continued Practice and Presidency of our Chancery have done; and for that it appertaineth to our Princely Office only to judge over all Judges, and to discern and determine such Differences as at any time may and shall arise between our several Courts touching their Jurisdictions, and the same to settle and determine, as we in our Princely Wisdom shall find to stand most with our Honour, and the example of our Royal Progenitors in the best Times, and the general Weals and Good of our People, for which we are to answer unto God who hath placed us over them. Our Will and Pleasure is, that our whole Proceedings therein, by the Decrees formerly set down, be inrolled in Chancery, there to remain of Record, for the better extinguishing of the like Differences and Questions that may arise in future Times.

Per ipsum Regem 18 July 14, 1616.

Fran. Bacon, Hen. Yelverton.

All which Proceedings are inrolled in Chancery.

of Chancery Vindicated.

51

In farther Vindication of which Judgment of his said Majesty, and to shew that the Chancery is not within the Statute, I desire that these four things may be taken into Consideration.

Who?

First, What the Forms were of making of Laws in those Times, and how they do now differ.

1.

Secondly, The Words of this Statute.

2.

Thirdly, What the Mischiefs and Grievances were that occasioned this Statute.

3.

Fourthly, What the Practice hath been ever since.

4.

First, Concerning the Forms of making of Laws in those Times, it appeareth upon the Rolls that most of the Laws were then preferred to the King by way of Petitions, and that the Lords, at the first sitting down of their House, did appoint Receivers and Tryers of Petitions, a Form yet used, and was done this very Parliament: But that is now *pro forma* only, there is no use of them; but in those times after the Petitions were received and had passed both Houses, they were ingrossed by the Clerk into one Roll, and so presented to the King. And after the end of the Parliament, all those Acts which the King had assented unto, and were to be published as Statutes were

1.

extracted into another Roll, and Transcripts made of them under the Great Seal of *England*, and sent to every Sheriff to be proclaimed in their several Counties (Printing being not then invented.) But sometimes there was not so much care taken as ought to have been in making of that second Roll, whereby many Acts are delivered to us imperfect, whereof some Examples are mentioned 4 *Institut.* To which this Act now in Question might have been added (but that use had been made of it against the Chancery) it seeming to be neither faithfully transcribed, nor faithfully translated, and is but abridged (and seven whole Lines together omitted) and yet it is printed among the Statutes at large. All which may appear by comparing the Print with the Roll of Petitions in that Parliament, Copies of both which are prefixed.

And where it was said, That there hath been no Contrall for these 200 Years; that this Statute was misprinted, and that the Learned Men of that time knew best how to print the Statute. It is answered, that there was no such use made as now, nor Cause given to look into it; for it rested 200 years without any such Exposition, as now is given to it, which late Exposition is the occasion that now 'tis looked into, examined, and (as is observed)

observed) ought to be rectified: And Printing was not then invented, the learnedst Man of that Age knew not what Printing was.

But those Forms of passing Bills in Parliament have been since altered, which began in King *Henry VII's* Time, when Petitions were so many and of such length that they could not well be comprehended in one Roll; then every Petition was changed into the Form of an Act, and made in English, which before were in French or in Latin, and presented by it self; and if the King did not assent unto it, it was laid aside and not entred upon the Statute Roll; and since Printing came up, there hath been no use of any such second Roll to collect the Acts to which the King had assented, nor of making any such Transcripts for the Sheriff to publish them (the Print supplying that turn.) But formerly all the Petitions remained upon the Parliament Roll, whether the King had assented unto them or no, as is apparent by the Roll of this Parliament of 4 *H. 4.* now in Question, by which it also appeareth that before this Petition there was another Petition of the Commons, wherein they complained, that by Writs issuing out of the Chancery under a Pain, and out of the Exchequer, and Letters from the King's Council, the Sub-

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jects were made to lose their Goods and Chattels upon Suggestions (which Petition is *Numero 78. Tit. Suggestion.*) to which the King did not assent (a Copy of which Petition is likewise prefixed.) And after upon the same Roll, *Numero 110.*, doth follow this Petition now in *Question Titulo, Plee Roial & Personel.* To which the King doth assent in Part, and as to the rest he saith, it was answered above amongst the Common's Petitions, whereby it also appeareth that the printed Books are mistaken in saying, *That it is ordained and established;* For it is but the Prayer of the Commons (a part whereof is not recited) that it may be ordained and established; the King's Answer being as above: Wherefore,

2. *Secondly,* The Words of this Statute, as they stand upon the Roll of Petitions to which the King gave his Answer, and upon the Statute Roll which is extracted out of it, because they differing one from the other, and the Roll of Petitions, being the Warrant for the Statute Roll, the Sense of that Act ought to be taken out of both: Therefore these Words are to be considered,

1. *First,* What is meant by the Words *Plee Royal.*

Secondly,

of Chancery Vindicated.

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Secondly, What by the Words, To answer anew.

2.

Thirdly, What by the Words, In Subversion of the Common Law.

3.

Fourthly, What by the Words, Judgments given in all the King's Courts, and in the King's Courts.

4.

Fifthly, What by the Words, Every Matter that may be determined by the Common Law.

5.

Lastly, What shall be said to be the first Article of this Petition, and what the Remanent.

6.

First, By the Words Plee Royal, for so they are written both in the Title, and in the Preamble of this Petition, and in the old printed Books (Placita Regia, or Regis Placita) as they are often called in the Laws of H. 1. cap. 7, 9, 10, 34, 52. are to be understood, being the same as Placita Coronæ; for Lex Coronæ is all one with Lex Regia; as also Jura Regia; and Jura Coronæ; Vid. Leg. H. 1. cap. 9. bis. 10, 13, 33. and the Register fo. 61. And Judicia Regalia Par. 2. H. 5. num. 15. And Actio Regis and Causa Regis Leg. H. 1. 34, 35. And the 4th Institutes 71, saith, they are called Proprie Causæ Regis, because they are Placita Coronæ Regis: And Placita

1.

Corona coram Rege in Parlamento, are at the end of each Parliament Roll.

Therefore by these Words *Plee Roial*, Pleas of the Crown are understood; for the Word *Roial* in French (in which Language this Statute was made) can bear no other Construction, but of something belonging to the King. And that Sense doth stand well, both with the other Words of this Petition, and with the Grievances of those Times, which occasioned it, as shall be shewn hereafter.

The Translator of this Statute (as it is in the late printed Books in English) doth render this Word by *Real*, whereunto it may be he was induced by the Relation of it to *Personel*: But the Word *Personel* standing in Relation to *Roial*, must signifie Pleas between Party and Party, and not draw *Roial* to be *Real*, in Relation to it. But this Construction of *Roial* by *Real*, the French Language, as 'tis said, will not bear, nor must it be interpreted by *Real*, as supposed to be mistaken by the Writer, when 'tis 'twice written *Roial*, in the Parliament Roll, and printed *Roial*: And where *Real* is to be signified 'tis written *Real*, as *Chose Real*, *Action Real*, *Service Real*, and never *Roial* to signifie *Real*.

And if it were rendred by *Real*, yet it were nothing as to the Chancery; for in those Times all Tryals between Party and Party for Land were for the most part by real Actions, as Writs of Entry, Writs of Right, *Assise of Novel Disseisin*, which last was the speediest Remedy for the Recovery of a Man's Right at Common Law, *Westm. 2. cap. 29.* But now the Practice of the Law is so much altered, that these Actions are seldom used, and almost antiquated; and instead thereof Actions of *Trespass*, of *Ejectione Firme*, of *Replevin* are come up, whereby Men are put out of their Lands, and mean Men are returned upon Juries, which then they were not; and they oftentimes observe more a Word of the Judge than the Testimony of the Witnesses. But let the Practice of the Law be reduced to what it was in those times, and let no Man be dispossessed of his Land, but by a Judgment upon a Real Plea, and the Chancery will meddle with no such Judgments. And Acts of Parliament must be construed and taken as the Law was holden, when they were made 2 *Inst. pag. 2.* For it is no reason to apply this or any other Statutes to Judgments upon such Pleas as were invented since, and that Age knew not or used not.

But

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But the Word being, *Royal*, must not be altered to serve a turn; for a Syllable or Letter could not be amended in a Writ or Process, but by a Statute of 14 E. 3. cap. 6. much less can this Word be altered, it must be taken as 'tis Written, for Acts of Parliament are not within that Statute.

2. *Secondly*, The Words, *To answer anew*, are considerable; for (as is said in the third Reason) in the Chancery, no Man is put to answer anew. It is the Plaintiff at Law that is put to answer in Chancery; and he cannot be said to answer anew having never answered before; nor is any part of the same matter answered again, or in Question in Chancery, that was in Question, and judged at Law: But because the Plaintiff would by Rigor of Law (having gotten a Judgment there) take a Forfeiture or break a Trust, he is put to answer that in Chancery according to Conscience, which Matter neither was in Question, nor can be determined by the Common Law, for the Law hath no Cognizance of it; and therefore those Words do shew that it was not the Chancery that was intended by this Statute.

3. *Thirdly*, It would be considered, what is understood by those Words, *In Subversion of the Common Law*.

The Common Law doth seem to be set in opposition by some not only to the Civil Law, to the Ecclesiastical Law, to the Statute Law, but also to the Chancery, and to the Decrees thereof, as if those Decrees were no part of the Law of the Land, and of the Common Law ; and as if the Lord Chancellor were no Judge of the Law : For the Petition saith, that such answering anew is in Subversion of the Common Law of the Land which cannot be understood of the Chancery, it being part of the Law of the Land.

But for the clearing thereof, it will be very requisite to look into the beginning of ours and others Laws, as how that Term of *Common Law* first began, the Word *Common* being never applied to one, but to many. As when two or more Nations or People, which were formerly governed by several Princes and several Laws, were afterwards united under one Prince and one Law, then such Laws were called Common Laws ; so we read of *Jus Commune Romanorum* that governed the whole Empire ; *Juria Communia Longobarda & Romana*, when the *Longobardi* had conquered a great part of *Italy*, and were united to the ancient Inhabitants ; and others.

So with us, when the *Saxons* had conquered a great part of this Island, and
had

had set up several Kingdoms in it, and had several Laws whereby those Kingdoms were governed; as the *West Saxon Law*, the *Mercian Law*, the *Northumbrian Law*, and afterwards the *Danes* prevailing, set up their Laws, called of them the *Danish Law*.

These several Kingdoms coming to be United, and the Name of *England* given unto this Kingdom, by them; and afterwards *Edward* (called the Confessor) being sole King thereof, caused one Body of Law to be compiled out of those several Laws; and did Ordain, That those Laws (of his) should be common to all his Subjects; and in those Laws of King *Edward* the Confessor, that Term of Common Law first began with us, being called Common in respect of those several People that before lived under several Laws, to whom those Laws were now common; though in respect of the Author they were called King *Edward* the Confessor's Laws, or *St. Edward's Laws*, *Ran. Cestrian*, *Spelman*, *Stow*, *Speed*, *Daniel*.

King *William* the First did endeavour to Abrogate those Laws, yet was afterwards perswaded to confirm them; to which notwithstanding he added divers of his own; and after him King *Henry* the First did the like, both whose Laws are lately published by a Learned Gentleman; yet when

when some of the succeeding Kings, especially King *John*, did endeavour to overthrow those Laws, the Subjects contended for them, which contention brake out into an open War (called the Barons Wars) which took end in the granting of the Charters of Liberties, called the great Charter, and the Charter of the Forests; though for a time those Wars broke out again, yet again ended by Confirmation of those Charters, as all our Histories mention.

And although those Laws of King *Edward* have been much altered by King *William* the First, and King *Henry* the First, and many of them grown obsolete, and many Customs grown up which now pass for our Common Law; yet in those Laws of King *Edward* the Confessor, the Word [*Common Law*] first began: and no Man can doubt but King *Edward's* Chancellors (whereof he had three successively, whose Names are remembred to this Day, and mentioned in the fourth Institutes) were used by him, both in the compiling and distributing them, as there was occasion; for the Chancellor and Chief Justice of *England* were Assistants to the King in all Judgments, for many Ages before and after; and neither then, nor for many years after (King *Edward* the Confessor's Time) was the Common Law
come

come to be a Profession, nor Lawyers made Judges or Pleaders.

In former times the most learned Clerks were best studied in the Laws, so the Clergy thrust into almost all places of Judicature, when 'twas said, *Nullus Clericus nisi Causidicus*: but King *Edward* the First, (after the Conquest) being (as 'tis said) weary of the great Power of the Chief Justice of *England*, was the first that altered that Course, by making Lay-Men Judges, (who kept the Robes of the former Judges, as they do to this Day) and then the Common Law came to be a Profession and a Study, and Students of Laws to be Pleaders in Courts and after to be Judges; and from that time the [*Common Law*] by degrees is grown to that height we now see 'tis come to.

It cannot be denied but that the Chancery, as it judgeth in Equity is part of the Law of the Land, and of the ancient Common Law; and let it not be imputed to the Chancery, that the Lord Chancellor hath too great an Arbitrary Power in making of his Decrees: for it be well observed, the Judges use a great a Power in declaring what is Law as the Lord Chancellor doth in declaring what is Equity; and if either be Covetous, Timorous or Malicious,

much hurt may be done by the one as by the other: whereas in Truth, neither of them ought to proceed in doubtful Cases without the Judgment of Parliament.

Therefore by these Words [*in Subversion of the Common Law*] the Chancery cannot be understood, as it judgeth in Equity, for Equity is and always hath been a part of the Law of the Land: *Æqua Justitia* is part of *Recta Justitia*, and precedes it, for it cannot be *Recta* unless it be *Æqua*: there is *Lex Terræ* mentioned in *Magna Charta*, wherein the Chancery is included for Equity, as well as the Judges are for Law; for *Judicium Parium* is of the Fact only. The Statute never meant that the Jury should Judge either what was Equity or what was Law, but left those to their respective Judicatures, by those Words [*per Legem Terræ*.]

And that Relief was given in Equity in former Times, appeareth by the Law of King Edgar cap. 2. before mentioned. And by the Laws of Henry First: *Gravamina placita sibi justitiæ vel misericordiæ principis addicuntur*, cap. 11. And again, *Nemo apud Regem Proclamationem faciat de aliquo qui ei secundum legem rectum offerat in Hundredo suo*, cap. 34. which is meant

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meant plainly by an Appeal to the King.

And after this Statute of *Magna Charta*, it is said of *Sylvester de Eversden* (who was Lord Chancellor 29 *H. 3.*) That he was cunning in the Customs of the Chancery; which must be understood in judging of Causes, not of making of Writs, those belonging not to the Lord Chancellor.

And by the Statute of *Articuli super Chartas* 28 *E. 1.* It is ordained, That no Common Pleas shall be from henceforth held in the Exchequer, *cap. 3.* whereby it appears that the Law Courts were not then settled.

And on the other part the King wills, That the Chancellor and the Justices of his Bench shall follow him, so that he may have at all times near him some that be learned in the Laws, which may be able duly to order such Matters as shall come unto the Court at all times, when need shall require, *cap. 4.* The King had no Chancellors then but Bishops, and they were to order Matters of Conscience, as the Judges Matters of Law.

27 *E. 3. cap. 26.* In the printed Books concerning Merchants, right shall be done in Chancery at every Man's Complaint.

36 *E. 3.* If any Man be grieved contrary to the Articles before mentioned,

he may come into the Chancery, and have Remedy, without pursuing elsewhere.

Parl. 2 Rich. 2. Numero 30. The Commons Petition, That the Lord Chancellor may make no Orders against the Law.

Resp. The Use heretofore shall stand so as the King's Regality be saved.

And again in the same Parliament, the Commons Petition, That no person should appear upon a Writ, *De quibusdam certis de Causis* before the Lord Chancellor, or any other of the Counsel, where Recovery is thereof given by the Common Law, which must be understood after Judgment.

Resp. The King willeth as his Progenitors have done, saving his Regality.

Parl. 17 R. 2. cap. 6. It is ordained, That the Chancellor shall have power to award Damages, according to his Discretion, to such as shall be unduly vexed by Writs grounded upon false Suggestions.

So as Judgments given in Chancery cannot be said to be in Subversion of the Common Law of the Land; the Chancery being a part of the Law, and the Judgments there being *prater, non contra Legem*.

Fourthly, The Words in the Petition being [*Judgments given in all the King's Courts*] in the Plural, and the King's An-

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swer being only [*in the King's Court*] in the singular (though the Print makes it Plural) cannot be extended to any Court but to one (especially being an Answer to a Petition which was made in the Plural) which Court of the King can be no other but the King's Bench, where Pleas of the Crown (intended here by the Words *Plee Royal*) were held, and no Pleas between Party and Party, unless it were very seldom, were then determined in that Court.

5. *Fifthly*, Those Words in the Petition [*every Matter that may be determined by the Common Law*] shew plainly, that there were some Matters then in Consideration, that could not be determined by the Common Law. *viz.* Cases of Conscience, which Matters cannot be denied to be proper for the Chancery, as the Chancery stands in a Notion severed from the Common Law; for it cannot be thought that it could be the meaning of any Parliament, that those Matters should not be determined at all, for then there should be a failure of Justice; and those words can bear no other Meaning, but that the Law should determine those Causes, which are within the Cognizance of it, and can be determined by it; but other Matters which are not within the Cognizance of the Law, as Equity, should

should be determined elsewhere, which must be in Chancery.

And if it be said, That such Matters ought to be brought and determined in Chancery before they be judged at Law; It is answered, That the Judgment at Law is nothing as to those Matters, for (as 'tis said before) the Common Law has no Cognizance of them, as in the Case of a Bond; The Question at Law is, Whether it were sealed and delivered, or the like, and that being found by Verdict, Judgment followeth that the whole Sum shall be paid; whereas the Chancery examineth (not the sealing and delivery of the Bond, but) what was at first due, what hath been paid since, what doth remain unpaid; and accordingly doth order the Party to take but what is justly due unto him, with his Damages and Costs, and will not suffer him to take 800 *l.* because he had a Judgment for so much, where it was proved that all was paid but 20 *l.* as the Case was lately in Chancery, where it was Decreed, That the Party should take but what was justly due unto him, notwithstanding his Judgment. But that Decree (as the rest) if the Chancery should be within this Statute will be judged unlawful, and the Plaintiff at

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Law shall have Execution of that Judgment for 800 *l.* where only 20 *l.* is due.

And it is worthy Observation, That these Words [*Every Matter that may be determined by the Common Law*] are omitted in the printing of this Statute; certainly there was no good Meaning in the Compiler, or in the Printer to leave them out, for they are in the Roll of Petitions in that Parliament to which the King did give his Answer, and do serve as a Key to open and expound all the other parts of this Statute; *Sed tulerunt Clavem.*

6. *Lastly*, It falleth to be considered, what shall be said to be [*the first Article of this Petition, and what the Remanent.*] The King's Answer is, that touching the first Article of this Petition, as to Judgments given in the King's Court, he doth grant it; but as to the Remanent, it is answered above amongst the Commons Petitions, of which distinction there is no mention made in the printed Books, but all joined together, as if all had been granted, which again argueth the Compiler, or Printer of no good Meaning. Nor is this Statute recited in the said *Institutes*. But to take the King's Answer as it is, this Statute must be divided into two Articles; and the King's Grant of the first cannot be extended to all, nor farther than the
Petition,

Petition, nor the Petition farther than the Grievance, which was, *viz.* That Judgments were questioned by the King himself, or by his Council, or in Parliament, which comprehendeth not the Chancery, nor could the King understand that it did include the Chancery, for then he should grant more than was demanded, and more than he intended: For he had denied before upon the same Parliament Roll to restrain his Chancellor; and if now he should restrain him, he should both deny and grant the same thing at the same time, as it were with the same Breath. But the King denying the Remainent, by saying it was answer'd above, that Remanent must be something which was contained in a former Petition of that Parliament, and in this also. And in all the Roll of that Parliament there is nothing of this Petition contained in any other, but only in that Petition [*Tit. Suggestions num. 78.*] which the King denied, and that part of the Petition is denied here also; for the Remanent which the King saith was answered above, can bear no other Meaning, nor refer to any thing else. Therefore the Words of this Statute are not General, as the Print would make them, but are restrained by the King's Answer to the first Article only, which is to *Plee Royal*, *viz.* Pleas of

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the Crown, and cannot extend to any thing that can concern the Chancery.

And if there were any doubt, King *James's* Judgment has cleared it; for Acts of Parliament are *Facta Regum*, whereof *Bracton* saith, the King is the only Judge, *Lib. 1. cap. 16.*

Considering therefore, that these Clauses are omitted out of the Print, which are in the Roll of Petitions in that Parliament; and that they do much conduce to the true Understanding of this Statute; and that there is such variance between that Roll and the Print; it is very requisite the Print should be corrected, for it may make many to Err, that do not consult the Petition Roll in Parliament.

3. *Thirdly*, It is a good Rule for the understanding of this and all other Statutes, to know what were the Mischiefs and Grievances in the Kingdom, which the Parliament meant to Remedy. For as 'tis observed in the 4 *Institutes*, many Records of Parliament can hardly be understood unless you join thereunto the History of the Times. And whosoever will look into those Times shall find that the great Grievance of calling Causes into question after Judgments were only Judgments of Treason, or Misdemeanour against the King.

And

And of such our Histories are full,
That King *Richard* the Second not much
above four Years before the making of
this Statute, had caused many to be ques-
tioned, and the Duke of *Gloucester* his
own Uncle to be put to Death, and af-
ter to be condemned; and likewise the
Earls of *Arundel* and *Warwick*, and the
Lord *Cobham* to be arraigned and con-
demned; and the first put to Death, the
other two to be banished, the one to the
Isle of *Man*, the other to the Isle of
Ferfie, where they were committed to per-
petual Prison; and another Lord *Cobham*
likewise to be arraigned. And besides
these Noblemen, there were Seventeen
whole Counties drawn in Question for
taking part with them, whereof many
Knights, Gentlemen, and others were
grievously fined, some at 100 l. some at
1000 Marks; all which had their Par-
dons by Acts of Parliament, 11 R. 2. c. 1.
And some of them had special Pardons;
but those Pardons were all made void
and revoked by the King with the Assent
of the Lords at the Request of the Com-
mons in Parliament, Anno 21 R. 2. c. 2,
Besides, many both in the City of *Lon-
don*, and in divers other Countries, were
forced by King *Richard* the 2d to sign
Blanks, called *Blank Charters*, wherein
the King or his Council might cause what
F f 4 they

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they would to be Written; many of which blank Charters King *Henry IV.* about two Years before this Statute caused to be openly burned at the Standard in *Cheapside*. And likewise in the beginning of King *Henry IV.*'s Reign many Noblemen were degraded by Act of Parliament, and divers were put to Death, and many things were done not agreeable to the Laws: For that was a Time full of Conspiracies, Insurrections, Rebellions, War; those were the Grievances which occasioned this Petition, and which the King was willing should be redressed, that Men might live secure after they had their Pardons, and after they were cleared by the Judgment of Law, and not be called in Question, and have their Pardons, Patents, and Estates taken from them by the King or his Council, or by Parliament contrary to Law; other Grievances we read of none, that were considerable or fit for the Commons to Petition against, especially so earnestly, as to desire Redress for God's Sake, and for the Preservation of all the Estates of the Kingdom.

4. *Lastly*, The Practice is to be taken into Consideration, to shew how this Statute was understood and expounded at, or soon after, the making of it; for 'tis a Rule, that *Contemporanea Expofitio* is especially to be regarded.

Rot.

Rot. Parl. 3 H. 5. num. 46. The Commons in their Petition say that the Chancery did proceed against the Law, and defeated Judgments of Law. And pray that no *Subpœna* might be granted for Matters determined at Law, under the Pain of 40 *l.*

Resp. Le Roy avisera.

Rot. Parl. 1 H. 6. num. 41. The like Petition.

Resp. The Statute of 17 *Rich. 2. c. 6.* shall be observed.

Note, That neither of these Petitions do mention that such Proceedings in Chancery were against the Statute of 4 *H. 4.* which would not have been omitted, if the Parliament had then thought that the Chancery had been within it.

Likewise in King *Henry VII's* Time there are many Precedents of Relief given in Chancery after Judgments at Common Law, when Cardinal *Moreton* was Chancellor, and after when Archbishop *Warham* was Chancellor and ever since; but it appeareth, by that which hath been said before, that neither Cardinal *Moreton* nor Archbishop *Warham* were the first that brought in the Precedent; and if they had, yet 'tis 160 Years since *Moreton* was first Chancellor, and the continual
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Usage and Practice since may very well admit it now for a Law; for Usage and ancient Custom make Law, 1 *Institut. fol. 115. a.* And although it were granted that no Usage nor Custom could hold against an Act of Parliament, yet against a Construction of an Act of Parliament (where the Words themselves are not plain and binding) Usage and a continued Course will hold; for in some Cases 'tis said, that though the Law, which was grounded upon an Act of Parliament were thus; yet *aliter utitur in diebus nostris*, 4 *Institut. 107.*

Many Judges when they sat in Chancery, by Commission, in the Vacancy or Absence of the Lord Chancellor have decreed Causes there after Judgments at Law.

Likewise in the Exchequer Chamber, Dutchy Chamber, in the Courts established in the *North* and in *Wales*, and generally in all other Courts of Equity, Matters have been called in Question, and relieved since the making of this Statute without Respect, whether they had been judged, or not judged before at Law.

And it would be well considered why this Statute, and the other of 27 *E. 3.* should be so much urged against the Chancery, and be observed in the other Courts. For the Chancery is not named

in

either of them; and if they be general laws, why should they not bind the Common Law Courts as well as the Chancery? For in those Courts, besides Errors judged in the King's Bench, there is nothing more Common than after Judgments given in Actions of *Ejectione Firme*, *Trespass*, *Replevin*, *Prohibitions*, new Actions are brought, and the same Title tried again, and Verdict given against Verdict, and Judgment against Judgment, and Suits carried from Court to Court, for one and the same Right or Title. How are the Parties then or their Heirs in Peace, that had the first Judgment, it not being undone by Attaint or Error, as this Statute Prescribes, neither of them being excepted in that of 27 E. 3. nor their Possession taken from them by a Writ of an higher Nature, but by bringing a new Action of the same Nature of the former; and questioning all again, that was in Question, and judged before, such Actions being called *Pick-purse Actions*, as who hath the best Purse will prevail: And no *Ejectione Firme* was brought against a Stranger before the 14 H. 7. long after this Statute; and therefore, though not within the Letter, is as much within the Intent of the Statute as any Decree in Chancery; and yet that must be upheld, although it was at first a Question,

stion, whether it were not Maintenance in the Lessor to maintain such an Action.

And why should it not be as lawful after a Judgment at Law once obtained to plead this Statute to a new Declaration and to a Bill in Chancery? Wherein is the former Judgment more undone by a Decree than by another Judgment upon another Verdict? And wherein are the Parties made to answer anew in the one more than in the other, if the Chancery did disaffirm the former Judgment which it doth not. And if by differences of Parties or Actions things may be questioned at Common Law to overthrow or avoid the former Judgment upon the same Point of Right or Title, Why should it be excepted against, that the Equity of a Cause should be examined in Chancery after a Judgment, which neither was nor could be in Question before the Judges at the Common Law? In the Common Law Courts all being brought into Question again, the Parties made to answer anew, and to answer the same Thing, that was answered and adjudged before; whereas in the Chancery nothing of the former Matter, nothing of the Judgment is touched, but only the corrupt Conscience of the Party is corrected, because he would take an advantage by Rigor of Law against all Equity and good Conscience. And there can be

no Question, that the Chancery should be within these Statutes, more than the other Courts; either all are bound by them, or all are free.

The Article against Cardinal *Wolsey*, That he had examined divers and many Matters in Chancery, after Judgments thereof given at the Common Law, in subversion of the Laws, and made some Persons to restore again what they had in Execution by vertue of the Judgment, at the Common Law, as is Reported 4 *Institut.* is too general and uncertain; for those Matters might concern Presentments to Churches, Prebends, or other Benefices, mentioned in the Statutes of Provisions, 16 *Rich.* 2. cap. 5. or other Matters that might be proper for the Common Law, and not for the Chancery; or he might Reverse the Judgments in the Points adjudged; or the Cardinal did many things with a high Hand, as appears by the other Articles, and by his usage of Sir *John Stan'y*, mentioned in the 38th Article, and when he was worthily complained of: But if they were Matters fit to be relieved in Equity (though after Judgments at Law) it is not probable that Sir *Thomas Moore* would have set his Hand to such an Accusation, as knowing that to have been done before the Cardinal's time

4 *Inst.* 91, 92.

4 *Inst.* 93.

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time, and by himself, as is certified by the Referees, if this be a true Copy which may be doubted; because Sir *Thomas Moore* doth sign before the Duke and other Noblemen, which place was not given to the Lord Chancellor till after his Death: And it is well known that the Cardinals Man [*Crommel*] did take him off from all Accusations in Parliament, yet this Article was the Cause of all the Rest, 44 are there Printed under the Title of the Court of Chancery; but it not mentioning what those Matters were that the Cardinal did Examine in Chancery, doth fall off of it self.

And for *Throgmorton's* Case so much stood upon, as wherein all the Judges are said to have given their Opinions it was thus,

Throgmorton being possessed of a Term, by a Grant from the Crown rendering a Rent, with a Proviso to be void for Non-payment, within 40 Days and having made many failures, which appeared upon Record; Queen *Elizabeth* granted away the Inheritance, which came to Sir *Thomas Heneage*, and from him to Sir *Moyle Finch*, in right of his Lady, who entred and sealed a Lease to one *Roots* to try the Title; and upon a Demurrer in the Exchequer, Judgment

ment was given for *Roots*, the Lessee; whereupon *Throgmorton* brought a Writ of Error, upon which the Judgment was affirmed; and after all that, he exhibited a Bill in Chancery, pretending for Equity, That the Non-payment of the Rent in 9 *Eliz.* was by the fault of a Servant, and no wilful Failure: To which Bill Sir *Moyle Finch* and *Roots* made Answer, and did set forth several Failures, in the 9th, 10th, and 17th Years of Queen *Elizabeth*, and at divers other times, which they alledged did appear upon Record and therefore, and for other Causes mentioned in their Answers, they demanded Judgment, whether the Court would hold Plea thereof or not: And Mr. Attorney General being of the Defendant's Counsel moved, That the Matter touching the Lease, whereof the Plaintiff sought Relief, might be dismissed; because the Lease had been, by the Opinion of the Judges, adjudged to be void in the Exchequer, for that the Rent was not paid to her Majesty within 40 Days, according to the conditional Clause contained to the Lease. To which Motion, Mr. *Philips* being of the Plaintiff's Counsel, made Answer and shewed, That the default of Payment in the 9th Year of Queen *Elizabeth*, was not voluntary,

2

but

but grew by the Negligence of a Servant; but that the Rent was afterwards paid, and that the Lands were enjoyed quietly by the Lessee so long as the Inheritance remained in her Majesty until the Defendant's Entry, and therefore prayed, That the matter in Equity might be retained. But forasmuch as the Cause was of great Weight, and would be a Precedent, the Lord-Keeper minded, before he gave any Order, to confer with the Judges, and directed that the Bill, Answer, and Records, which shewed the Defaults of Payments should be brought to the Judges, as appeared by an Order in Chancery, 28th of *Mar* 39 *Eliz.*

And 15th of *November* following, the Lord-Keeper did declare in open Court that all the Judges, except one that was absent, had considered of this Cause and were all (one of them that had not so considered, excepted) of Opinion That the particular Case as it stood, would not meet to be retained and examined in Chancery; yet his Lordship said he would be advised, and give such Order should be meet; as appeareth by the Order then made, which was the last of that Case.

Now the particular Case as it stood was upon the several Forfeitures,

Non-payments of the Rent; and the Bill seeking Relief but against one in the 9th year of her late Majesty, the rest of the Failures being not mentioned: And the Lease having been adjudged void in Law, not only for the Failure in the said 9th Year, but for the other Failures also, for which no Remedy was sought; the Case as it stood might not be held meet to be examined and relieved in Chancery, for it stood upon divers Failures, and likewise upon the Queen's Interest against whom there was no Equity to be sought in Chancery.

But in all those Proceedings it doth not appear, that the Lord-Keeper did make any Order to retain the Bill, as is alleged, nor that there was any Petition to the Queen, nor any Reference from her to the Judges, nor any Certificate of the Judges (other than Verbal) to the Lord-Keeper (as is said) and by him declared in Court; none of which could be unknown to the Attorney General, altho' now it be otherwise urged under his Name in the 3d and 4th *Institut.* By which the Statute is made the only Reason of the Judges Opinions, whereas it doth not appear that this Statute was once mentioned in all those Proceedings.

Sir *Moyle Finch's* Answer is not to be found (it is not unlikely to have been

B b

burned

burned when the Fire was in the Six Clerks Office) but it seems the Cause was not dismissed, for there was no Dismission enrolled nor any Order for a Dismission entred, neither doth it appear that there were any further Proceedings in it : But howsoever that Opinion of the Judges being given upon the several Forfeitures and the Queen's Interest, and the Judgment that *Throgmorton's* Lease was void, that Case doth nothing concern the Question.

And the Inconveniencies that would follow to the Subject if the Chancery should not relieve after Judgments in Cases of Frauds, Breaches of Trusts, Forfeitures, &c. where the Common Law cannot relieve, would prove so great and intolerable a Grievance, that no Man could live under such Laws; for any Man that will take Advantage may obtain a Judgment at Law before the other can get a Decree, or an Injunction in Chancery, what Equity soever this Case requireth, and then he must be remediless for ever, and thereby all Fraud, Circumvention, Corrupt, Crooked and unconscionable Dealings of Crafty, deceitful Persons would be countenanced, encouraged and abetted, and the ancient Rules of Equity and Conscience smothered and suppressed upon the imaginary
Credis

Credit and Reputation of a Judgment at Law which, though of great Weight, may be unconscionably gotten, especially since all Men know, that not one Judgment of an hundred is pronounced in Court, nor the Case so much as heard or understood by the Judges, but entred by Attornies, which then they were not, but pronounced by the Judges in open Court.

Therefore it would be incouragement to imagin that the makers of that Law 4 H. 4. did ever intend that such Judgments entred so secretly and underhand, that 'tis oftentimes difficult to find them should not be examined, and the Parties relieved; or that by those Words in the Statute [*After Judgments given in the Court of our Sovereign Lord the King*] they could intend such Judgments as should be entred by Attornies without the Judges Knowledge.

Neither can it be thought that the Parliament 21 Jac. cap. 26. wherein Attornies are excepted from being Felons, if they acknowledge Judgments for any Person without his Privy, did intend either that the said Attornies should be free from all Punishment in such Cases, or that such Judgments should be of so great Weight and Force as never to be questioned, nor the Party relieved, but utterly undone,

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because an Attorney hath acknowledged a Judgment against him, whereof he can know nothing till he be taken in Execution.

For admit (as is mentioned in the 3d *Institut.* 123.) that the Plaintiff doth by Collusion retain an Attorney for the Defendant (without the Defendant's Knowledge) and the Attorney confesseth the Action, and Judgment is entred, must this Judgment be binding for ever, and shall the Defendant have no way to help himself? The Book saith, that in this Case the Defendants sought Remedy in Parliament, and that the Parliament did give Power to the Lord Chancellor by the Advice of two Judges, to hear and order the Case in Equity [whereupon it concludeth that the Chancery could not do it without higher Authority] which is no very good Consequence.

For that Case was a mix'd Case of Equity (to right the Defendant) and of Misdemeanour (to punish the Practice) and therefore required several Judges that might inform the Parliament of both; but that Petition shewed, that the Court, wherein this Judgment was given, could not give Remedy in that Case; and the Reference shewed, that it was not conceived to be within the Statute of 4 *H.* 4. For then the Parliament (in its Power of

Judica-

Judicature) could not have medled with it; and so that Case must have been without Remedy, as all others of the like Nature must be, if this Construction hold, whereof no doubt there will be so many that it were better to live under no laws than such as do give way to, and do not provide Remedies against such Mischiefs.

And Statutes being always to be expounded so as there be not a Failure of Justice, 2 *Institut.* 23. And the Chancery Court being now the only ordinary Remedy that is left to prevent and give Relief in such Cases, it is strange it should so earnestly be endeavour'd to be abridged of that Power, whenas this strictness to maintain the Rigor of the Law is observed no where besides. The Parliaments of *France* (which are Courts of Justice) and the Lords of the Session in *Scotland* (where the Chancellor hath the Chief Place) do minister Justice, not according to the Rigor of Law, but with Reason and Equity, *Cambden in Scotis pag. 8.* And must we above all others be debarred of that Benefit, and left remediless, and the Chancery tyed up from giving Relief, only upon Inferences, and the Construction of a Statute wherein it is not named, and the King having denied in the very same Parliament, and upon the same Roll, to restrain his Chancellor?

And where it was said, that it is against a Maxim of Law for a Man to help himself against a Record upon a bare Surmise, let it not be thought that the Chancery doth help any Man upon a bare Surmise; for if he doth not bring very good Proofs, the Chancey doth dismiss him, and punish him by making him pay good Costs, so far it is from relieving any that are causelessly Troublesome: Nor is the Chancery to be guided by every Maxim of Law, but it is to control such Maxims as are against the Law of Reason, *Doctor & Stud. lib. 1. cap. 17.*

And it is worthy Observation, that the Judges themselves do oftentimes extend their Directions, (and do therein play the Chancellors,) to mitigate the Rigour of the Law after Verdicts, by staying the *Postea*, and by Consequence the Judgment, and sometimes after Judgment by staying Execution till the Party will Consent to take what they in Equity think fit (by what Law they do so themselves best know.) But it is as necessary that the Chancery should give Relief after Judgments as the Judges to stay the Judgment or Execution, and themselves to order the Matter in Equity: But neither the Chancery nor any other Courts are within this Statute, but only those which are named in it, which are the

the King himself, his Council, and the Parliament. And in Cases only which concern the King, as hath been said, none of which concern the Chancery.

For the Meaning and true Sense of this Statute (as it stands upon the Parliament Roll of Petitions) is, that no Man should be drawn into Question, at the King's Suit, which is expressed by the Words *Plee Royal*, and put to Answer again before him, or his Council, or in Parliament, that hath been acquitted by Judgment of the Common Law (as those were that had their Pardons before mentioned) or such as should hereafter be acquitted by Judgment of the Common Law; and in that Sense this Statute hath been observed ever since, and no such Judgments have been questioned by the King, or by his Council, or in Parliament.

But it were a strange Construction of this Statute to say, that the Chancery alone, and no other Court, should be bound by it, and that the Parliament should give no Relief in any Case whatsoever after a Judgment at Law, be it obtained by Corruption apparent, Injustice, Fraud, &c. And that the Subject should be left destitute of all help after a Judgment, unless he can overthrow it by attainting the Jury, or by Error;

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whereas an Attaint is so Penal that one Jury will rarely Attaint another (for it may be their own Cases.) And Error for the most Part is in the Pleadings, and the like strictness to observe the Rule of the Law must be held by the Judges upon the Writ of Error, as was held in the former Judgment.

To conclude therefore ; neither the Words of this Statute, nor the King's Intention in granting part of it, nor the Mischiefs before that did occasion it, can maintain any such Construction ; that the Chancery for Matter of Equity should be bound by it ; and the Practice in Chancery, and in all other Courts of Equity since, doth shew plainly, that it was never so understood.

And so King *James's* Judgment stands firm.

Virga Æquitatis, Virga Regni tui.

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